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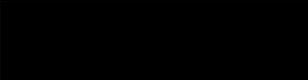
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

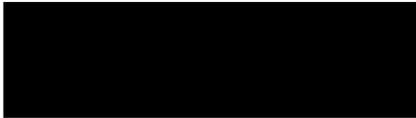


U.S. Citizenship
and Immigration
Services



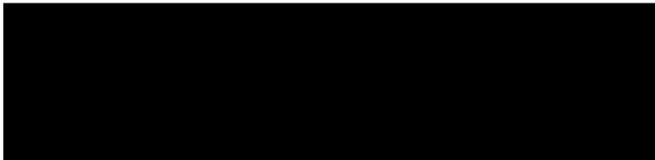
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FILE:  OFFICE: VERMONT SERVICE CENTER DATE: JUN 02 2010

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

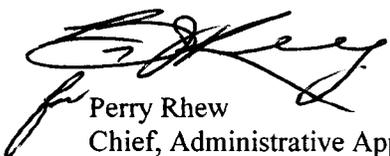


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because the applicant had been convicted of felony in the United States, and was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

On appeal, counsel asserts, "[t]he judge adjudicated a nolo pross." Counsel asserts that court documents previously provided were not final.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The FBI report dated August 21, 2007, reflects the following offense in the state of Florida:

1. On March 29, 2005, the applicant was arrested by the Miami-Dade Police Department for vehicle theft-grand theft in the 3rd degree.
2. On April 10, 2005, the applicant was arrested by the Miami-Dade Police Department for larceny – petit theft.
3. On June 10, 2005, the applicant was arrested by the Sheriff's Office in Lee County for possession of marijuana and possession of cocaine.

4. On March 19, 2007, the applicant was arrested by the Miami Police Department for marijuana-sell cannabis sell manufacture deliver possess with intent, possession of cocaine, and smuggle contraband-introduction, possession unlawful article in jail.

The applicant, in an earlier request, provided the court dispositions for numbers one, two and three above. These court documents reflect that each proceeding was held in juvenile court. The applicant's juvenile record does not render her ineligible for TPS under either 8 C.F.R. § 244.3 (conviction of crimes involving moral turpitude) or 8 C.F.R. § 244.4 (felony/misdemeanor convictions). *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000).

In response to the Notice of Intent to Withdraw TPS issued on February 2, 2009, which requested the applicant to submit certified court documents for each charge in number four above, the applicant submitted certified court documents, which reflect that on April 9, 2007, the applicant pled *nolo contendere* to violating F.S. 893.13(1)(A)(2), possession of cannabis more than 20 grams, and F.S. 893.13(6)(A), possession of cocaine, both 3rd degree felonies. The court accepted the applicant's plea, and adjudication of guilt was withheld and the applicant was ordered to pay a fine. The court entered a *nolle prosequi* on the remaining charge, FS 951.22, introduction into or possession of contraband in a county detention facility. Case no. [REDACTED]

On appeal, counsel asserts, "[w]e are submitting the final certified court document declaring that the petitioner was found not guilty in both counts that were under the same case number: [REDACTED] Counsel provides the same court document that was previously provided by the applicant.

Counsel's assertion, however, is without merit. The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The record, in this case, reflects that the applicant entered a plea of *nolo contendere* to the drug offenses, and the judge accepted the plea and ordered some form of punishment (\$498.00 in fines). Therefore, for immigration purposes, the applicant was convicted of the felony offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to her two felony convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to her drug convictions. Consequently, the director's decision to withdraw TPS will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.