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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  
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**MAR 18 2010**

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[SRC 99 192 50031]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 two misdemeanors in the United States.

On appeal, counsel asserts that the applicant's probation and community supervision has been terminated, and requests that the applicant be allowed to file a waiver. Counsel asserts that the applicant's family will suffer extreme hardship.

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).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

In response to the Notice of Intent to Withdraw TPS issued on January 20, 2009, counsel submitted court documents from the Harris County Criminal Court of Texas which revealed the following:

1. On October 14, 2000, the applicant was arrested for driving while license is suspended, a violation of Texas Transportation Code section 521.457. On December 21, 2000, the applicant pled guilty to this Class B misdemeanor offense. On January 23, 2001, the applicant was sentenced to serve three days in jail and ordered to pay a fine. [REDACTED]
2. On April 8, 2007, the applicant was arrested for driving while intoxicated, a violation of section 49.04 PC. On May 22, 2007, the applicant pled guilty to this Class B misdemeanor offense, and was sentenced to serve 180 days in jail and ordered to pay a fine. The applicant's sentence was suspended and he was placed on community supervision for one year. The applicant subsequently violated his probation and on

January 16, 2008, the applicant was ordered to serve 60 days in the county jail.

3. On December 21, 2007, the applicant was arrested for driving while intoxicated operating - 2<sup>nd</sup> offense, a violation of section 49.09(a) PC. On January 16, 2008, the applicant pled guilty to this Class A misdemeanor offense. The applicant was sentenced to serve 60 days in jail and ordered to pay a fine.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel's statements made on appeal have been considered; however, there is no waiver available for this ground of ineligibility. 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 from the withdrawal of the TPS application is dismissed.