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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
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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

MAR 29 2010

[WAC 99 229 52528]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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, the applicant asserts that he has only one arrest record against him and "for the criminal court this case counts as only one case with 1 misdemeanor."

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.

"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.

The FBI record dated April 26, 2006, reflects that on August 6, 1999, the applicant was arrested in Huntington Park, California for forgery of State, Corporate and Official Seal.

In response to the Notice of Intent to Withdraw TPS issued on June 29, 2009, the applicant submitted court documentation from the Huntington Park Municipal Court of Los Angeles County, which reflects that on August 6, 1999, the applicant was arrested for violating section 472 PC, forgery of State, Corporate and Official Seal, section 23152(a) VC, driving under the influence, and section 23152(b) VC, driving with .08 percent or more alcohol in the blood. On August 31, 1999, the applicant pled *nolo contendere* to violating sections 472 PC and 23152(b) VC, both misdemeanors. For violating section 472 PC, the applicant was sentenced to serve nine

days in jail, ordered to pay a fine and placed on probation for three years. For violating section 23152(b) VC, the applicant was placed on probation for three years, ordered to pay a fine, and enroll in and complete a first offender alcohol program. [REDACTED]

The applicant asserted, in pertinent part, "I only have 1 misdemeanor on my records, as the Section 8 CFR 244.1(1) clearly specifies that a misdemeanor is considered a misdemeanor if I was sentenced to 1 yr. of imprisonment in USA and I was not for such time in jail."

In the instant case, the applicant was convicted of an offense which California law describes as a misdemeanor. See section 40000.15 of the California Vehicle Code. Further, section 42002 of the California Vehicle Code indicates that a misdemeanor is punishable by up to six months in jail or a fine not exceeding one thousand (\$1000) dollars, or by both.

As noted above, for immigration purposes, a misdemeanor is any offense that "is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any*. Because the California court could have sentenced the applicant to up to six months in jail for violating section 23152(b) VC, it is concluded that this conviction is considered to be a misdemeanor for immigration purposes.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.

Finally, it is noted that a Form I-221, Order to Show Cause and Notice of Hearing, was issued on June 25, 1996. The FBI report reflects that the applicant was deported to Honduras on February 11, 1987.

ORDER: The appeal is dismissed.