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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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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

MAR 30 2010

[SRC 01 023 52064]

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:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserted that the applicant has not been convicted of three misdemeanors and she has complied with and been cleared of said violations. Counsel submitted copies of documents that were previously provided. Counsel indicated that a brief and/or additional evidence will be submitted to the AAO within 30 days. However, more than ten months later, no additional correspondence has been presented by either counsel or the applicant.

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.

The FBI report dated February 12, 2009, reveals the applicant's criminal history in the state of Florida as follows:

1. On September 5, 2007, the applicant was arrested by the Sheriff's Office in Collier County for driving while license is suspended/revoked, a violation of FS 322.34.(2)(a).
2. On February 7, 2008, the applicant was arrested by the Sheriff's Office in Collier County for failure to appear-non compliance collection hearing for driving without a license, a violation of FS 843.15(1)(b).
3. On September 16, 2008, the applicant was arrested by the Sheriff's Office in Collier County for failure to appear-non compliance collection hearing for driving without a license, a violation of FS 843.15(1)(b).

In response to the Notice of Intent to Withdraw TPS issued on February 17, 2009, the applicant submitted the following:

- Letters of Clearance dated January 13, 2009 in [REDACTED] and [REDACTED] [REDACTED] which indicate that the cases were paid and closed on March 25, 2008 and September 17, 2008, respectively. These letters of clearance relate to numbers two and three above.
- A Driver License Check printout reflecting the applicant's failure to pay traffic fines from July 25, 2007 through March 10, 2008, from the Highway Safety & Motor Vehicles' website.
- Receipts for payment of fines and a Driver's License Suspension Clearance Form.
- Court disposition in [REDACTED], which indicates that the applicant violated FS 322.03(1), driving without a license, a misdemeanor of the second degree. On June 14, 2007, the applicant pled *nolo contendere* to the offense. Adjudication of guilt was withheld and the applicant was ordered to pay a fine.
- Court disposition in [REDACTED], which indicates that the applicant violated FS 322.03(1), driving without a license, a misdemeanor of the second degree. On July 5, 2007, the applicant pled *nolo contendere* to the offense. Adjudication of guilt was withheld and the applicant was ordered to pay a fine.
- Court disposition in [REDACTED], which indicates that the applicant violated FS 322.34 (2A), driving while license is suspended/revoked, a misdemeanor of the second degree. On October 3, 2007, the applicant pled no contest to this offense and was ordered to pay a fine.

Counsel's assertion that the applicant does not have three misdemeanor convictions because she has complied with all of the courts requirements is without merit. Mere compliance with a court order neither alleviates the applicant of any convictions that had occurred nor dismisses or expunges any convictions.

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 court dispositions reflect that the applicant pled no contest and *nolo contendere* of the offenses and the judge ordered some form of punishment to each charge above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

The applicant is ineligible for TPS due to her three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.