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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]

MAR 31 2010

FILE:

[REDACTED]  
[SRC 99 193 53012]

Office: VERMONT SERVICE CENTER

Date:

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on June 11, 1999. The Director, Texas Service Center, approved that application on June 12, 2000.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that the case should be reopened.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: 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 such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*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 record reveals the following offenses:

- (1) On September 21, 1998, the applicant was arrested by the Miami-Dade, Florida Police Department for "Aslt or Batt." [REDACTED]. Court records indicate that the applicant was not prosecuted for this offense.
- (2) On April 22, 2000, the applicant was arrested by the Miami-Dade, Florida Police Department for "Aggrav Asslt-Pol Off." [REDACTED]. A court printout provided by the applicant confirms that the applicant was placed on probation for this offense. Counsel concedes, on appeal, that the applicant was convicted of this misdemeanor.
- (3) On September 26, 2000, the applicant was arrested by the Miami-Dade, Florida Police Department for "Agg Asslt W Weap W No Int to Kill." A court printout provided by the applicant confirms that the applicant was fined for this offense.
- (4) On April 20, 2003, the applicant was arrested by the Miami-Dade, Florida Police Department for driving with a suspended license. [REDACTED]. Despite the director's January 23, 2009, request, the applicant has failed to provide the final disposition for this misdemeanor.
- (5) On September 30, 2006, the applicant was arrested by the Miami-Dade, Florida Police Department for "Driving Under Influence." [REDACTED]. Court records provided by the applicant confirm that on February 20, 2007, the applicant pled guilty to this misdemeanor and was placed on probation for a period of six months.

The director withdrew temporary protected status because the applicant had been convicted of at least two misdemeanors. On appeal, counsel for the applicant states that the case should be reopened. However, the applicant fails to provide any evidence to overcome the basis for the director's decision. Counsel asserts that the conviction detailed in No. 2 above is the applicant's only misdemeanor conviction. However, counsel failed to address the misdemeanor conviction detailed in No. 5 above.

The applicant is ineligible for TPS because of his misdemeanor conviction. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS is 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.