

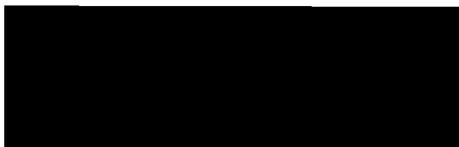
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 04 2010**
[WAC 99 232 52263]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (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 it was determined that the applicant had been convicted of a felony in the United States.

On appeal, the applicant requests that his case be reopened. The applicant submits additional certified copies of his court dispositions.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The FBI report dated June 22, 2009, reflects the applicant's criminal history as follows:

1. On October 4, 1998, the applicant was arrested by the Sheriff's Office in Redwood City, California for petty theft. The South San Francisco Municipal Court of California dismissed the offense.

2. On June 5, 1999, the applicant was arrested by the Los Angeles Police Department of California for possession of a narcotic controlled substance.
3. On April 19, 2001, the applicant was arrested by the Sheriff's Office in Norwalk, California for burglary.
4. On August 18, 2008, the applicant was arrested by the Houston Police Department of Texas for theft \$1500-\$20,000.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, and in response to the Notice of Intent to Withdraw issued on June 23, 2009, the applicant provided the requested court documents, which reveal the following:

- On or about August 19, 2008, the applicant was arrested for theft \$1,500-\$20,000, a State jail felony. Pursuant to section 12.44(b) of the Texas Penal Code, the court authorized the state to prosecute the case as a Class A misdemeanor. On October 27, 2008, the applicant pled guilty to a Class A misdemeanor offense. The court accepted the applicant's plea, granted deferred entry of judgment and placed the applicant on two years of community supervision and ordered him to pay a fine of \$500.00. [REDACTED]
- A letter dated April 15, 2005, from San Mateo County Superior Court of California, indicating that no cases were found under the name [REDACTED]
- Court docket from the San Mateo County Superior Court of California relating to the applicant's arrest on October 4, 1998, under the alias [REDACTED] for violating section 484 PC, theft and section 490.5 PC, petty theft of merchandise. On October 5, 1998, the applicant pled not guilty to the theft charge. The docket indicates that a bench warrant was issued on October 15, 1998, and that the disposition for petty theft of merchandise was denied. [REDACTED]
- On June 5, 1999, the applicant was arrested for possession of a narcotic controlled substance, a violation of section 11350 H&S, a felony. On June 11, 1999, the applicant pled guilty to the charge and was placed on diversion, which was successfully completed. On January 11, 2001, the charge was dismissed pursuant to section 1000.3 PC.¹ [REDACTED]

¹ Because the proceedings were suspended prior to the entry of judgment and the applicant successfully complied with the requirements of the diversion program, the AAO does not consider this arrest a criminal conviction as defined under section 101(a)(48) of the Act.

- On April 19, 2001, the applicant was arrested for violating section 484 PC, theft of property. On April 23, 2001, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for three years on condition that he serves five days in jail and pays a fine. [REDACTED]

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 Immigration and Nationality Act.

The court disposition in [REDACTED] reflects that the applicant pled guilty to the offense and the judge ordered some form of punishment to the charge and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

The applicant is ineligible for TPS due to his two misdemeanor convictions on April 23, 2001 and October 27, 2008. 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.

The crime of theft is a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974). Therefore, the applicant's convictions for these offenses render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available for inadmissibility under 212(a)(2)(A)(i)(I) of the Act .

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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.