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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 05 2010**  
[SRC 99 218 51828]  
[EAC 09 248 50161-motion]

IN RE: Applicant: [REDACTED]

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

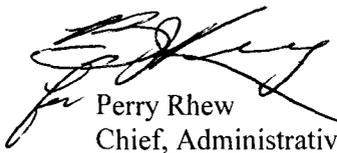
ON BEHALF OF APPLICANT:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion 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. The AAO, in dismissing the appeal on August 3, 2009, concurred with the director's findings. The AAO also dismissed the appeal as it was determined that the applicant had failed to establish his nationality and identity, and had provided insufficient evidence to establish continuous residence and physical presence during the requisite periods.<sup>1</sup>

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The regulation at 8 C.F.R. § 103.5(a)(4) states, "[a] motion that does not meet applicable requirements shall be dismissed."

On motion, counsel asserts that the applicant has not been convicted of two misdemeanors as driving while license invalid is a Class C misdemeanor. Counsel also provides additional evidence in an attempt to establish the applicant's continuous residence and physical presence in the United States, and his nationality and identity.

The record reflects that on April 10, 2005, the applicant was arrested by the Dallas Police Department of Texas for driving while license suspended/invalid, a violation of Texas Penal Code section 521.457, and driving while intoxicated, a violation of Texas Penal Code section 49.04. On September 26, 2005, the applicant was convicted of both offenses. [REDACTED]

On motion, counsel asserts that the driving while license invalid is a Class C misdemeanor, which is punishable by only a fine. Counsel asserts that this offense may only be classified as a Class B Misdemeanor where the individual was previously convicted of this same offense, or if it is shown that the license of the individual had been previously suspended as a result of an offense involving the operation of a motor vehicle while intoxicated.

The AAO does not dispute that Class C misdemeanors in the state of Texas are not considered misdemeanors for immigration purposes because they are punishable by only fines not to exceed \$500.00. *See* Texas Penal Code, section 12.23.

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<sup>1</sup> The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 244.9.

The regulation at 8 C.F.R. § 244.1 defines “misdemeanor” as 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. [Emphasis added].

In the instant case, the court documents submitted clearly indicate that the applicant was charged with and subsequently convicted of a Class B misdemeanor. On the Form M-90, Court’s Admonition of Statutory and Constitutional Rights and Defendants Acknowledgement, the court noted the applicant was charged with “DWLS” and the maximum range of punishment was a fine not to exceed \$2000 and confinement in jail for a term not to exceed 180 days. Further, the police report [REDACTED] dated April 10, 2005, clearly indicates that on December 6, 2004, the applicant’s driver license had been suspended.<sup>2</sup>

Without affirmative evidence from the court establishing that the driving while license suspended/invalid arrest of April 10, 2005, resulted in a Class C misdemeanor conviction, counsel’s assertion has not merit. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On motion, counsel submits an earnings statement for the period ending October 21, 1998, that was previously submitted; his son’s October 15, 2000 birth certificate; and a letter dated May 4, 2000, from [REDACTED] attesting to the applicant’s employment from March 1998 to April 2000.

The earning statement only serves to establish the applicant’s presence in the United States in October 1998. The employment letter from [REDACTED] has little probative value as it failed to include the applicant’s address and duties at the time of employment as required under 8 C.F.R. § 244.9(a)(2)(i). No evidence such as lease agreements, utility statements, wage and tax statements, or affidavits from affiants has been submitted to corroborate the applicant’s residence since December 30, 1998, and physical presence since January 5, 1999 to the filing date of his TPS application.

On motion, counsel submits an additional copy of the applicant’s birth certificate. Once again, the birth certificate was not accompanied by a photo identification, such as a passport or national identification document to establish the applicant’s nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met as the issues presented on motion fail to contain new facts to be proved supporting a motion to reopen. Therefore, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

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<sup>2</sup> The police report indicates that the applicant’s driver license was suspended due to a “DWLI/NO INS.”

**ORDER:** The motion is dismissed. The previous decision of the AAO is affirmed.