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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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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[SRC 99 131 51222]  
[EAC 10 021 50201 – MOTION]

Date: **MAY 12 2010**

IN RE: Applicant: [REDACTED]

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

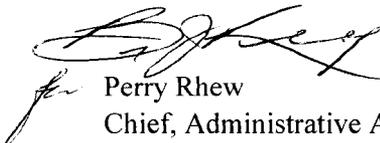
ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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 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).

The director withdrew TPS because the applicant failed to submit the requested court disposition relating to his arrest for public intoxication. The AAO, in dismissing the appeal on September 25, 2009, determined that the applicant had been convicted of a felony. The AAO also determined that the applicant failed to provide proof of his nationality and identity. On motion, the applicant through counsel reasserts his claim of eligibility and submits a copy of the final court disposition and additional evidence of his nationality and identity.

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).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The applicant has not met the requirements of a motion to reconsider.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

On December 26, 2007, the applicant was arrested by the Causeway Bridge, Louisiana Police Department for "Operating a Vehicle While Intoxicated" and "Public Intimidation." [REDACTED]

Pursuant to notices dated December 31, 2007, and March 12, 2008, the applicant was requested to submit the final court disposition for the arrest detailed above. The applicant submitted court documentation regarding the above mentioned arrest. According to the Misdemeanor Bill of Information, the charge of operating a vehicle while intoxicated, a violation of LRS section 14:98 was *nolle prossed*. The applicant also submitted a Felony Bill of Information that indicated on April 22, 2008, the applicant was found guilty of public intimidation, a violation of LRS 14:122, a felony. The applicant was given a suspended sentence; placed on probation for two years on condition he pays a fine of \$400; perform six eight-hour days of community service activity; and pay a monthly supervision fee while on probation. On May 20, 2008, a Notice of Appeal was filed before the First Circuit Court of Appeals. An Order granting the appeal was entered on May 21, 2008. The final outcome of the applicant's appeal, however, was not provided at the time the AAO issued its decision on September 25, 2009.

On motion, counsel contends that the applicant was never convicted of a crime, but was only placed on probation and informed "not to run afoul of the law for a period of 2 years." Counsel contends that as the applicant did not run afoul of the law during the probationary period, he has not been punished and, therefore, he has not been convicted. 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 disposition submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of restraint on the applicant's liberty. Therefore, the applicant has been "convicted"

of this offense for immigration purposes. As such, the issue on which the underlying decisions were based has not been overcome on motion.

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 since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

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