



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: Vermont Service Center Date: **SEP 08 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:

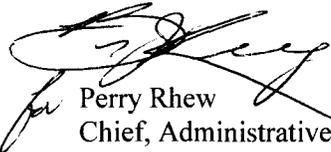
[REDACTED]

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 Vermont Service Center 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 the applicant's TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that the requested court documentation was sent by certified mail on February 17, 2009. The applicant through counsel provides an additional copy of the court documentation.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. 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.

The record reveals that on May 14, 2007, the applicant was arrested by the Sheriff's Office in Austin, Texas and charged with sexual assault on a child. In issuing a Notice of Intent to Withdraw TPS on January 21, 2009, the director advised the applicant to submit the final court disposition for this charge. The applicant, however, failed to respond to the notice prior to the issuance of the director's Notice to Withdraw TPS dated June 23, 2009.

On appeal, counsel provides the requested court documents, which reflect that the applicant was charged with sexual assault with child, two counts of indecency with child sexual contact, and

indecency with child by exposure, all felonies. On January 7, 2008, the applicant pled guilty to a reduced charge of assault with bodily injury, a Class A misdemeanor. Case no. [REDACTED]

However, it was not clear whether the applicant had been convicted of one or two charges as the sentencing read "Count 1-2." As such, on July 6, 2010, the AAO issued a notice to the applicant requesting that he provide certified court documentation from the Travis County District Court in order to resolve this inconsistency.

Counsel, in response, submits court documentation which reflects that the applicant was found guilty of one charge of assault with bodily injury, a violation of Texas Penal Code section 22.01(a)(1), a Class A misdemeanor. The applicant was sentenced to serve 300 days in the Travis County Correctional Facility and was placed on probation for 18 months. Imposition of sentence was suspended and the applicant was placed on community supervision for 18 months, and was ordered to pay a fine.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and the application will be approved.

The denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the applicant's initial TPS application has been approved, the denial of the re-registration application will be withdrawn and also be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.