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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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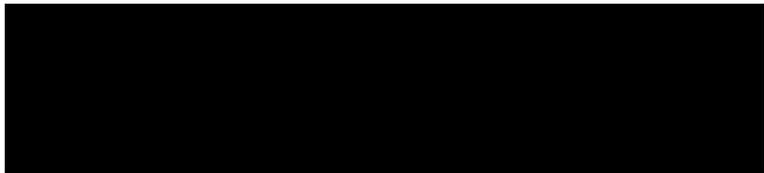
DATE: **JUN 22 2011** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

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:

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 \$630. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office 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 the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts the applicant is seeking approval of his Forms I-601 and I-821 because neither of his crimes is a crime associated with the security and related grounds as defined in section 212(a)(3) of the Act, is a crime involving moral turpitude, or is related to a control substance violation.

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 TPS 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).

"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 Federal Bureau of Investigation report dated August 9, 2010, reflects the following offenses in the state of Texas:

1. On September 22, 1996, the applicant was arrested by the Austin Police Department for driving while intoxicated.
2. On June 18, 2007, the applicant was arrested by the Sheriff's Office in Austin for driving while intoxicated – 2nd offense.
3. On August 2, 2009, the applicant was arrested by the Sheriff's Office in Austin for prostitution.

In response to the notice dated August 24, 2010, which requested the applicant to submit certified judgment and conviction documents for all arrests, the applicant provided:

- Court documentation in [REDACTED] from the County Court of Travis County, which reflects that on March 4, 1998, the applicant pled *nolo contendere* to driving while intoxicated, a violation of Texas Penal Code section 49.04, a Class B misdemeanor. The applicant was sentenced to serve 30 days in jail.
- Court documentation in Case no. [REDACTED] from the County Court of Travis County, which reflects that on September 25, 2008, the applicant pled *nolo contendere* to reckless driving, a violation of Texas Transportation Code section 545.401, a misdemeanor. The applicant was ordered to serve 30 days in jail and pay a fine. Imposition of sentence was suspended and the applicant was placed on supervision for 20 months.
- Court documentation in Case no. [REDACTED] from the County Court of Travis County, indicating that the prostitution charge was set for September 29, 2010.

On appeal, counsel submits court documentation from the Justice Court, Five Precinct, Travis County, Texas, which reflects that the prostitution charge in Case no. [REDACTED] was dismissed as the case had been re-filed and the applicant was subsequently charged with disorderly conduct - noise, a violation of Texas Penal Code section 42.01, a Class C misdemeanor. On March 9, 2011, the applicant pled no contest to violating Texas Penal Code section 42.01. The applicant was ordered to pay a fine and received ten days jail credit. Case no. [REDACTED]

Counsel's statements on appeal have been considered. However, there is no waiver available, even for humanitarian reasons, for this ground of ineligibility. The applicant is ineligible for TPS due to his three misdemeanor convictions. 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.

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.