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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 30 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 at least two misdemeanors in the United States.

On appeal, counsel argues that the driving under the influence convictions did not result in misdemeanor convictions to bar TPS eligibility as neither of the cases involved damage to the property/person of another. Counsel asserts that these offenses are traffic violations

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 court documents from the County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida reflect the following:

1. On February 23, 2004, the applicant pled *nolo contendere* to and the applicant was found guilty of violating Florida Statute 316.193, driving under the influence. The applicant was placed on probation for six months, ordered to pay a fine, perform community service and his license was suspended/revoked for 180 days.  
[REDACTED]
2. On June 18, 2009, the applicant pled *nolo contendere* to and the applicant was found guilty of violating Florida Statute 316.193(1), driving under the influence. The applicant was placed on probation for one year, ordered to pay a fine, perform community service and his license was suspended/revoked for one year.  
[REDACTED]

3. On June 18, 2009, the applicant pled *nolo contendere* to and the applicant was found guilty of violating Florida Statute 316.1939(1)(E), refusal to submit to BAL test. The applicant was placed on probation for 22 months, and ordered to pay a fine. [REDACTED]

A first conviction of driving under the influence is punishable by up to a fine of \$1000 and by imprisonment of not more than six months. A second conviction of driving under the influence is punishable by up to a fine of \$2000 and by imprisonment of not more than nine months. *See* Florida statute 316.193(2)(a). As noted above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any*. Because the Florida court could have sentenced the applicant to up to six months for his first conviction in number one and up to nine months for his second conviction in number two, it is concluded that these convictions are considered to be misdemeanors for immigration purposes

Contrary to counsel's assertion, the court documentation in [REDACTED] does not indicate that the offense was treated as a traffic violation. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.

While not the basis for the dismissal for the appeal, it is noted that the applicant failed to submit the requested final court disposition for his arrest on January 25, 2004, for violating Florida Statute 316.1939(1), refusal to submit to BAL test.

**ORDER:** The appeal is dismissed.