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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: **FEB 02 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Applicant:

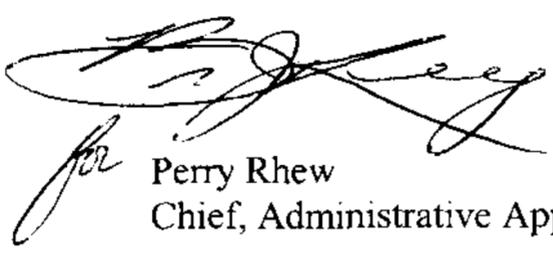
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

IN 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.

Thank you,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and the re-registration application denied by the Director, Vermont Service Center.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 granted. The order dismissing the appeal will be withdrawn. The appeal will be sustained.

The applicant is a native and citizen of Honduras who was granted 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 he found the applicant had failed to properly register. The AAO, upon a *de novo* review,<sup>1</sup> determined that the applicant had provided a timely response to the director's notice and that the director failed to adequately articulate the basis of the withdrawal. The AAO affirmed the withdrawal of TPS as the applicant was no longer eligible for TPS due to his two misdemeanor convictions in the United States.

On appeal, counsel for the applicant asserts that the applicant has one misdemeanor conviction as the remaining conviction is considered a traffic infraction.

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.

In response to a Notice of Intent to Withdraw TPS issued on June 30, 2006, the applicant submitted:

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<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

- Court documentation in Case no. [REDACTED] from the Criminal Court of the City of New York, which indicated that on December 29, 1997, the applicant pled guilty to driving while impaired by alcohol, a violation of VTL 1192.1.
- Court documentation in Case no. [REDACTED] from the Criminal Court of the City of New York, which indicated that on December 15, 2005, the applicant pled guilty to driving while intoxicated, a violation of VTL 1192.2.

The issue in this proceeding is whether New York offenses considered to be “traffic infractions” should constitute disqualifying convictions for “misdemeanors” in determining TPS eligibility under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4.

Traffic infractions committed in the State of New York are not considered “crimes” under state law, do not constitute misdemeanors or felonies, and may not be punished by more than 15 days of imprisonment. *See* New York Penal Law § 10.00(2), (4) and (6); New York Vehicle and Traffic Law §§ 155, 1800(b).

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services (USCIS) has determined that New York traffic infractions should not be considered disqualifying misdemeanors.

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.

The applicant has one misdemeanor conviction for driving while intoxicated 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 regulation in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the decision of the director to withdraw the applicant's TPS and to deny the re-registration application, and the decision of the AAO upholding the director's decision will be withdrawn.

**ORDER:** The motion is granted. The decisions of the Director, Vermont Service Center, dated February 1, 2006, and of the AAO dated November 6, 2007, are withdrawn. The appeal is sustained.