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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

M1



DATE: **JAN 05 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

ON BEHALF OF APPLICANT: Self-represented

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,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 denied the application because the applicant had been convicted of four misdemeanors in the United States.

On appeal, the applicant apologizes for his previous wrongdoings and asserts that he has not committed any crimes in the past ten years. The applicant, asserts, in pertinent part:

The TPS provisions may be compared to the provisions for the Nicaragua and Central American Relief Act. The latter provides for a period of seven years during which the applicant is required to show good moral character. Criminal convictions occurring outside that time period are not considered unless they are aggravated felonies or certain special crimes. In the instant case, the applicant's convictions are for simple misdemeanors.

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 dated May 5, 2010, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- Court documentation in Case no. [REDACTED] from the Municipal Court of Los Angeles County, California, which indicates that on August 11, 1997, the applicant pled *nolo contendere* to violating section 242-243(e) PC, battery upon a spouse or cohabitant, a misdemeanor. The applicant was sentenced to serve time in jail or perform 30 days of service to Cal Trans. The applicant was ordered to pay a fine and was placed on probation for three years.
- Court documentation in Case no. [REDACTED] from the Municipal Court of Los Angeles County, California, which indicates that on August 22, 1997,

the applicant pled *nolo contendere* to violating section 23152(b) VC, driving with .08 percent or more alcohol in the blood, a misdemeanor. The applicant was sentenced to serve time in jail and ordered to pay a fine or perform 12 days of service to Cal Trans. The applicant was also ordered to attend a first offender alcohol and drug education program and he was placed on probation for three years.

- Court documentation in Case no. [REDACTED] from the Superior Court of Los Angeles County, California, which indicates that on September 12, 2001, the applicant pled *nolo contendere* to violating section 23152(b), VC driving with .08 percent or more alcohol in the blood, a misdemeanor. The applicant was sentenced to serve time in jail, ordered to pay a fine or perform 14 days of service to Cal Trans and he was placed on probation for four years.
- Court documentation in Case no. [REDACTED] from the Superior Court of Los Angeles County, California, which indicates on December 3, 2001, the applicant pled *nolo contendere* to violating section 14601.5(a) VC, driving while license is suspended or revoked for refusing chemical test or driving with excessive blood alcohol content. The applicant was sentenced to serve time in jail and ordered to pay a fine or perform 10 days of service to Cal Trans, and he was placed on probation for three years.

The applicant's statements on appeal have been considered. However, a time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). The applicant must meet the eligibility requirements at the time the application is filed, and at any time thereafter.

The applicant is ineligible for TPS due to his four 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 deny the application for this reason 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that a removal hearing was held on May 29, 1998, and the applicant was granted voluntary departure from the United States on or before July 28, 1998. On June 25, 1998, the applicant appealed the

immigration judge's decision to the Board of Immigration Appeals (BIA). On June 29, 1999, the case was administratively closed to allow the applicant the opportunity to apply for TPS.¹

ORDER: The appeal is dismissed.

¹ Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).