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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

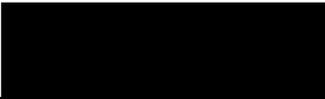


U.S. Citizenship
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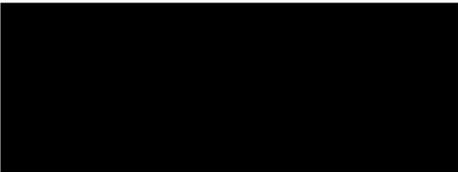
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DATE: **JAN 20 2012** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Applicant: 

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

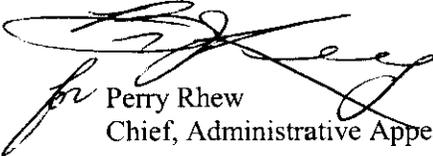
ON BEHALF OF APPLICANT:



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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center (VSC). A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is once again before the AAO. The AAO will reopen the matter on a service motion pursuant to 8 C.F.R. § 103.5(a)(5)(i). 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 the applicant's TPS because it was determined that he had been convicted of two misdemeanors in the United States. On appeal, which was received on April 29, 2010, counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days.

On June 25, 2010, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(3)(1)(v), as the record at the time contained no evidence that a brief and/or additional evidence had been provided.

On motion, the AAO has determined that a brief was received at VSC within the required timeframe as demonstrated by the United States Postal Service track and confirm printout provided by counsel. The order summarily dismissing the appeal will be withdrawn and the appeal will be adjudicated on its merits.

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 July 8, 2009, reflects the applicant's criminal history in the state of Massachusetts as follows:

1. On January 19, 1997, the applicant was arrested by the Boston Police Department for assault and battery on police officer.

2. On September 6, 1999, the applicant was arrested by the Boston Police Department for open and gross lewdness.
3. On December 12, 2006, the applicant was arrested by the Boston Police Department for operating motor vehicle after revocation or suspension.

In response to a notice dated November 25, 2009, which requested the applicant to submit certified judgment and conviction documents for all arrests, the applicant provided:

- Court documentation in Case no. [REDACTED], which indicated that on January 21, 1997, the applicant was charged with threatening to commit a crime, assault, assault and battery on a police officer and resist arrest. On or about February 20, 1998, the case was dismissed.
- Court documentation in Case no. [REDACTED] which indicated that on September 7, 1999, the applicant was charged with violating M.G.L. chapter 272, section 53, indecent exposure. Neither a plea from the applicant nor a finding from the court was entered. The applicant was ordered to pay \$25 court cost and the case was dismissed.
- Court documentation in Case no. [REDACTED] which indicated that on December 4, 2006, the applicant was charged with violating M.G.L. chapter 90, section 23(d), operating motor vehicle while license is suspended. On December 4, 2006, the case was dismissed.
- Court documentation in Case no. [REDACTED] which indicated that on September 17, 2007, the applicant was charged with violating M.G.L. chapter 90 section 24(1)(a)(1), operating under the influence with .08 percent or more blood alcohol content, and M.G.L. chapter 90 section 24(2)(a), negligent operation of motor vehicle. On March 21, 2008, the applicant entered an admission to sufficient facts accepted after colloquy and 278 § 29D warning of violating M.G.L chapter 90 section 24(1)(a)(1). The applicant was ordered to pay a fine and attend a rehabilitation program. The remaining charge was dismissed.

The director, in his decision, determined that because the applicant could have received a jail sentence of up to six months for violating M.G.L. chapter 272, section 53, it was determined that he had been convicted of a misdemeanor for immigration purposes.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, **and** (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act. [Emphasis added]

Although the court ordered the applicant to pay a court administrative cost of \$25, no plea was entered by the applicant nor did the court find the applicant guilty of the offense of indecent

exposure. Therefore, the applicant was not convicted of indecent exposure within the meaning of section 101(a)(48)(A) of the Act.

The applicant's one misdemeanor conviction (Case no. 0714CR003287) does not render the applicant 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.

ORDER: The appeal is sustained.