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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: Office: VERMONT SERVICE CENTER

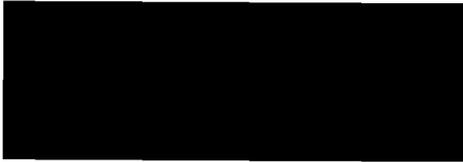
FILE: 

MAR 01 2012

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:

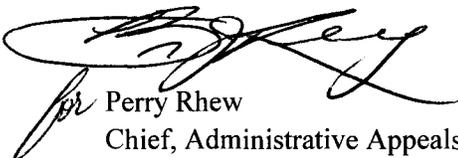


INSTRUCTIONS:

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,


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel, citing federal case laws including *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S 2010)¹ and *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006)², asserts that the applicant was not aware of the immigration consequences of entering a guilty plea as he was not informed by either his counsel or the court.

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 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.

The record contains the following:

¹ Counsel must inform a client whether his plea carries a risk of deportation

² A conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes.

1. Court documentation in Case no. [REDACTED] from the Marion County District Court of Arkansas, which indicates that on July 14, 2003, the applicant pled guilty to driving while intoxicated-1st offense, a violation of Ark. Code Ann. section 5-65-103. The applicant was ordered to pay a fine and sentenced to serve time in jail.
2. Court documentation in Case no. [REDACTED] from the Saline County District Court of Arkansas, which indicates that on or about May 14, 2005, the applicant pled guilty to driving while intoxicated-2nd offense, a violation of Ark. Code Ann. section 5-65-103. The applicant was ordered to pay a fine and sentenced to serve time in jail.
3. Court documentation from the District Court of Little Rock (Second Division), Arkansas, which indicated that on January 9, 2007, the applicant pled guilty to driving while intoxicated-3rd offense, a violation of Ark. Code Ann. section 5-65-103. The applicant was ordered to pay a fine and sentenced to serve time in jail. Ticket no. [REDACTED]

In the instant case, counsel has not provided any credible evidence to support her assertion that the applicant had not been advised of the possible immigration consequences of a guilty plea by either his counsel or the trial court. 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). In a footnote, counsel indicated that due to time restraints of the appeal, the applicant has not motioned the appropriate courts to vacate his pleas. Without credible evidence from the courts indicating that the convictions have been vacated for underlying procedural defects having to do with the merits of the case, the convictions continue to effect immigration consequences.

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.

Finally, while not the basis for the withdrawal of TPS or dismissal of the appeal, it must be noted that counsel, on appeal, indicates that on October 19, 1999, the applicant plead guilty to one count of misdemeanor reckless driving and one felony count of driving under the influence causing damage to property or person in Miami-Dade County, Florida. The court documentation, however, is not in the record. These charges must be addressed in any future proceedings.

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.