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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**

[REDACTED]

M₁

DATE: SEP 24 2012

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

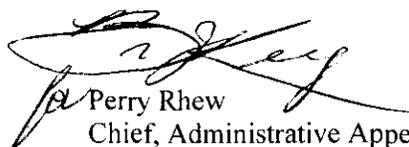
ON BEHALF OF APPLICANT:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. 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 the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel resubmits court documentation which indicates that the misdemeanor conviction had been amended to a municipal ordinance.

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 court documentation from the District Court of Polk County, Iowa, which indicates:

1. On [REDACTED] the applicant was arrested for theft in the fifth degree, a violation of Iowa Code 714.2(5). The applicant was subsequently convicted of this misdemeanor offense and was ordered to pay a fine of \$100. [REDACTED]

2. On [REDACTED] the applicant was arrested for interference with official acts, a violation of Iowa Code 749.1. On [REDACTED] the applicant was convicted of this misdemeanor offense and was ordered to pay a fine of \$250.00. [REDACTED]

On January 9, 2012, the director withdrew the applicant's TPS based on the above misdemeanor convictions.

The record also contains court documentation from the District Court of Polk County, Iowa which indicates that on October 22, 2010, a judge reduced the [REDACTED] conviction of interference with official acts from a misdemeanor to a municipal ordinance (Des Moines City Code §70-67). Under Iowa law, a municipal ordinance is not punishable by any imprisonment and is not considered a misdemeanor under the provisions of section 244 of the Act.

In the current case, the court did not erase the applicant's record of guilt, instead, it modified the original charge so that the applicant stood convicted of a municipal ordinance not a misdemeanor. *See Matter of Cota-Vargas*, 23 I & N Dec. 849, holding that a criminal court's decision to modify or reduce an alien's criminal sentence is valid for immigration purposes regardless of the court's reason for the modification or reduction.

The applicant has one misdemeanor conviction and it 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 to withdraw the applicant's TPS will, itself, be withdrawn, and TPS will be reinstated.

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.

ORDER: The appeal is sustained.