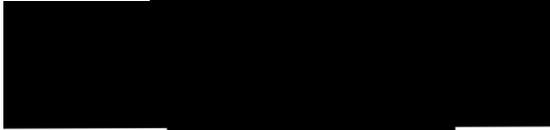




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



ML

FILE:



[WAC 99 196 52184]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2007

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on February 4, 2000.

On December 29, 2004, the applicant filed another Form I-821, Application for Temporary Protected Status, and indicated that she was applying for re-registration.

On June 28, 2005, the service center director denied the applicant's re-registration application because he found that the applicant had been convicted of two misdemeanors. On March 20, 2006, the Director (now Chief) of the AAO dismissed the applicant's appeal from the denial decision, finding that the applicant had not overcome the basis for the denial of the application. The AAO Director further stated that the service center director should have withdrawn the applicant's Temporary Protected Status pursuant to section 244(c)(3)(A) of the Act, 8 C.F.R. § 244.14(a)(I), because the applicant had become ineligible for TPS after having been granted that status.

On May 1, 2006, the service center director withdrew the applicant's Temporary Protected Status because he found that the applicant had been convicted of two misdemeanors and was, therefore, ineligible for TPS.

On appeal, the applicant submits a statement and additional evidence. It is noted that the applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or

- (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status 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).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

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.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The applicant's 2005 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Riverside, California, on March 10, 2001, and charged with driving under the influence of alcohol. On March 2, 2005, the applicant was requested to provide the final court disposition of this arrest. The applicant, in response, submitted a document from the Superior Court of California, County of Riverside, indicating that the applicant pled guilty on May 1, 2001, to one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor, and one count of driving under the influence of alcohol with a blood alcohol content to 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. (Case No. RIM406277).

The director denied the re-registration application because he found the applicant had been convicted of two misdemeanors.

On appeal, the applicant asserted that she had only been convicted of one misdemeanor. The applicant submitted a photocopy of a motion filed with the Superior Court of California, County of Riverside, on July 19, 2005, applying for a withdrawal of the applicant's guilty plea and dismissal of the complaint detailed above pursuant to section 1203.4 PC.

The Director of the AAO dismissed the appeal on March 20, 2006, finding that the applicant is ineligible for TPS because of her record of two misdemeanor convictions. The Director stated that the service center director should have withdrawn the applicant's Temporary Protected Status, since she had become ineligible for TPS after having been granted that status.

On May 1, 2006, the service center director withdrew the applicant's Temporary Protected Status because she had been convicted of two misdemeanors.

On appeal, the applicant states that she hired an attorney to help her "correct" her record. She submits a photocopy of an order from the Superior Court of California, County of Riverside, granted the applicant's motion to vacate her guilty plea, enter a plea of not guilty, and dismiss the complaint.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). The applicant has not provided any evidence to establish that her guilty pleas were vacated, pleas of not guilty entered, and the complaint dismissed, based on the merits of the case. Therefore, the applicant's two misdemeanor DUI convictions constitute convictions for immigration purposes.

The applicant is no longer eligible for TPS due to her history of two misdemeanor convictions. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status for this reason will be affirmed.

An alien applying for temporary protected status 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.



Page 5

ORDER: The appeal is dismissed.