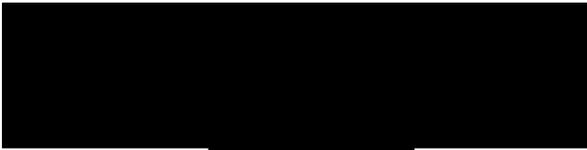


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FILE: [REDACTED]  
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Office: TEXAS SERVICE CENTER Date: **SEP 17 2007**

IN RE: Applicant:



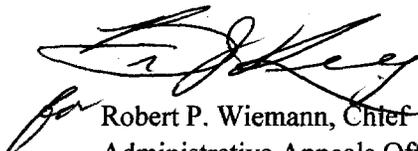
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is 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 determined that the applicant had been convicted of two misdemeanors in the United States. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant should be granted TPS because he is a Honduran national.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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 record reveals:

1. On October 13, 2002, the applicant was convicted in the Circuit and County of Dade County of "Disorderly Intoxication."
2. On January 23, 2006, the applicant was convicted in the Circuit and County of Dade County of "Resisting/Obstructing Officer/Firefighter."
3. On March 31, 2006, the applicant was convicted in the Circuit and County of Dade County of "Driving Under the Influence."

The applicant is ineligible for temporary protected status because of his three misdemeanor convictions. 8 C.F.R. § 244.4(a).

On appeal, counsel for the applicant states that the applicant should be granted TPS because he is a Honduran national. According to counsel she is pursuing post-conviction relief in order to invalidate the underlying pleas leading to conviction because the applicant was unaware that taking a plea could negatively affect his immigration status.

However, despite counsel's efforts to pursue post-conviction relief, the applicant was still "convicted" of the charges listed above. The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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. In the above-mentioned cases, the applicant pled nolo contendere or was found guilty of the designated charges and the judge ordered some form of punishment to the charges. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The record of proceeding reflects that on February 20, 1996, an immigration judge ordered the applicant removed from the United States to Honduras. A Warrant of Removal/Deportation, Form I-205, was issued on February 21, 1996. The applicant was deported from the Houston, Texas port on February 27, 1996.

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.

**ORDER:** The appeal is dismissed.