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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

Public Copy

FILE: [Redacted]
SRC 99 175 50194

Office: Texas Service Center

Date: AUG 2 2001

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

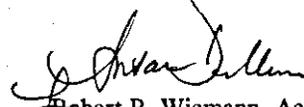
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations 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. 1254a.

The director determined that the applicant was ineligible for TPS because he has been convicted of two misdemeanors. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an alien 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:
 - (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.

Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The Federal Bureau of Investigation (FBI) report reflects the following arrests in Florida:

1. Arrested on January 14, 1997 and charged with 2 counts of battery. The applicant failed to submit the arrest report and the court's final disposition of these charges. While the applicant submits on appeal a copy of a notice of court appearance relating to Case No. [REDACTED], it is not clear if this case relates to the battery charges.

2. Arrested on February 22, 1998 and charged with Count 1, hit and run; Count 2, driving under the influence; and Count 3, driving under the influence with property damage. The record reflects that the applicant was found guilty as to Count 2 (Case No. [REDACTED]). However, the sentence imposed on the applicant is not reflected in the record although he was requested, in a notice of intent to deny dated August 18, 2000, to submit the court disposition of his conviction showing the sentence imposed. Additionally, the final disposition as to Counts 1 and 3 is not reflected in the record.

3. Arrested on June 27, 1999 (Case No. [REDACTED]) and charged with driving under the influence, a misdemeanor. The applicant was found guilty of the crime on June 29, 1998. The sentence imposed on the applicant, however, is not reflected in the record although he was requested, in a notice of intent to deny dated August 18, 2000, to submit the court disposition of his conviction showing the sentence imposed.

The director determined that the applicant was ineligible for TPS because he has been convicted of two misdemeanor offenses. The applicant, however, failed to submit the court's final dispositions of his arrests, listed above, as had been requested by the director. Nor did he submit evidence to show that these arrests are not felonies or misdemeanors.

The burden of proof is upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. Applicants shall submit all documentation as required in the instructions or requested by the Service. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.