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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



Public Copy

FILE: [REDACTED]
WAC 99 191 52779

Office: California Service Center

Date: MAY 7 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a national 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 failed to submit additional evidence as had been requested. The director, therefore, denied the application.

On appeal, the applicant states that she did not receive the letter from the Service requesting her police record because she had since moved. She submits a copy of her criminal record.

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 of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since January 5, 1999;
- (c) Has continuously resided in the United States since December 30, 1998;
- (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; 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.

The applicant was requested on March 8, 2000 to submit police clearances from every city she has lived in the last five years, and a copy of the certified court disposition of each arrest. While the applicant claims on appeal that she did not receive the director's request, the record reflects that the request for additional evidence was mailed to the applicant at her most recent address provided to the Service.

The applicant, on appeal, furnished a letter of clearance from the Los Angeles County Sheriff's Department certifying that "a name search only" inquiry encompassing the last five years was performed on the applicant and shows no record with the Sheriff's Department. It is noted that the applicant moved within the Los Angeles County. The applicant also submits the court docket of a conviction issued by the Superior Court, County of Los Angeles, California. The court record reflects that on April 11, 1994, the applicant was indicted for theft of property in violation of section 484(A) of the California Penal Code, a misdemeanor.

The record reflects that the applicant was convicted of only one misdemeanor offense. Therefore, she is not ineligible for TPS as provided in section 244(c)(2)(B)(i) and 8 C.F.R. 244.4(a). The director did not find the petitioner ineligible under any other provisions of 8 C.F.R. 244.2.

The burden of proof is upon the applicant to establish that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.