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U.S. Department of Justice
Immigration and Naturalization Service

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

File:



Office: Vermont Service Center

Date: 12 FEB 2002

IN RE: Applicant:



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

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application 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 indicated on his application that he entered the United States in May 1991, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that he has been a law abiding person for the past ten years, and has not been involved in any illegal activities. The applicant requests that his application be reconsidered.

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,....

The FBI record reveals the following offenses in the state of California:

(1) On October 29, 1991, the applicant was detained by the Anaheim Police Department for possession/manufacture/sale of a dangerous weapon. On October 30, 1991, the District Attorney declined to prosecute due to interest of justice.

(2) On February 21, 1992, the applicant was arrested, under the [REDACTED] by the San Francisco Police Department for possession of a narcotic controlled substance for sale, a violation of section 11351 H&S, a felony. The applicant was subsequently charged and convicted of accessory, a violation of section 32 PC, a felony. The applicant was sentenced to serve time in jail.

(3) On April 9, 1992, the applicant was arrested, under the alias [REDACTED] for possession of narcotic controlled substance and possession of a controlled substance paraphernalia.

(4) On April 11, 1992, the applicant was arrested, under the [REDACTED] [REDACTED] for possession of controlled substances paraphernalia. The applicant was subsequently charged and convicted of accessory, a violation of section 32 PC, a felony. The applicant was sentenced to serve time in jail.

(5) On April 17, 1992, the applicant was arrested, under the [REDACTED] [REDACTED] by the [REDACTED] Police Department for two counts of transportation/sale of controlled substance. The offenses were subsequently dismissed by the court due to furtherance of justice.

(6) On October 9, 1993, the applicant was arrested, under the [REDACTED] [REDACTED] by the Norwalk Sheriff's Office for grand theft property and hit and run causing property damage. The final outcome, however, is unknown.

The director, in denying the application, determined that the applicant had been convicted of two misdemeanor offenses in numbers two and four above. Section 32 of the California Penal Code states

every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent said principal may avoid or escape from arrest, trial, conviction or punishment, having in knowledge that said principal committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.

Thus, the applicant has been convicted of two felony offenses in numbers two and four above. The applicant is ineligible for temporary protected status because of his felony convictions. 8 C.F.R. 244.4(a).

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.

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. This decision constitutes a final notice of ineligibility.