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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File:



Office: Vermont Service Center

Date: JAN 18 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 indicated on his application that he entered the United States on February 20, 1996, 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 record established that the applicant had been convicted of a felony in the United States.

On appeal, the applicant acknowledges his criminal offense, but claims that the action was the result of not understanding the ramifications of his actions and the inability to speak and understand the language. 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,....

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record contains a FBI sheet which reveals that on August 24, 1993, the applicant was arrested by the Police Department in San Francisco, California for transportation/sale of a controlled substance, a violation of section 11352(a) H&S. The applicant was convicted of this felony offense and sentenced to serve time in jail.

The applicant is ineligible for temporary protected status because of his felony conviction. 8 C.F.R. 244.4(a). The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his drug conviction. 8 C.F.R. 244.3(c)(1).

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.