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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MI



FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 08 2004

IN RE: Applicant



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

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 was ineligible for TPS because she had been convicted of two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that according to the applicant, she was convicted of two misdemeanor violations on June 10, 1997, and on April 14, 1999, and that the two other arrests on April 16, 1998 and August 3, 1999, were dismissed. Counsel further asserts that the applicant has retained the services of a criminal attorney to reopen proceedings as to the two misdemeanor convictions, based on new information that will dismiss the charges. He, therefore, requested an additional 240 days to allow new counsel to file motions and briefs. To date, no additional statement or evidence has been provided.

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) of the Act 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 [now the Secretary of the Department of Homeland Security (the Secretary)] 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 record reflects the following:

1. On April 30, 1997, in Los Angeles, California, Case No. [REDACTED] the applicant was arrested and charged with Count 1, burglary in the second degree, PC 459-460(b), a misdemeanor; and Count 2, petty theft, PC 484-488, a misdemeanor. On June 10, 1997, the applicant entered a plea of "no contest" as to Count 1. She was found guilty of Count 1, and ordered to pay \$225 in costs. Count 2 was dismissed.
2. The Federal Bureau of Investigation (FBI) report reflects that on April 16, 1998, in Redwood City, California, the applicant, under the name of [REDACTED] was arrested and charged with grand theft property. The court's final disposition of this arrest is not contained in the record of proceeding.
3. On December 2, 1998 in Dayton, Ohio, the applicant was arrested for receiving stolen property. On April 14, 1999, in the Common Pleas Court of Montgomery County, Ohio, Case No. [REDACTED] the applicant was convicted of receiving stolen property (over \$500), a felony. She was sentenced to Community Control Sanctions for a term of 5 years "Monitored Time," ordered not to return to the State of Ohio, and ordered to pay \$650 in court costs and supervision fee, and \$165 in restitution to the victim.
4. The FBI report reflects that on August 3, 1999, in Sunnyvale, California, the applicant, under the name of Jelba Banegas, was arrested and charged with burglary in the first degree. The final disposition of this arrest is not reflected in the FBI report. The record of proceeding, however, contains a copy of the Misdemeanor Docket of the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] charging the applicant for violation of PC 484-488, theft. The court's final disposition of this charge is not contained in the record. The misdemeanor docket indicates "see minute 8-27-99;" however, the applicant failed to submit a copy of this "minute." Additionally, the record of proceeding contains a copy of the Felony Docket of the Municipal

Court of California, Santa Clara County Judicial District, also under Case No. [REDACTED] charging the applicant with violation of PC 459-460(b), burglary. Again, the court's final disposition of this charge is not contained in the record, and although the felony docket indicates "see minute 8-27-99," the applicant failed to submit a copy of this "minute."

While counsel asserts that the applicant has retained the services of a criminal attorney to reopen the criminal proceedings based on new information that will dismiss the convictions, no evidence was furnished to establish that the applicant's convictions were, in fact, dismissed. Furthermore, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), the Board of Immigration Appeals determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on her felony and at least two misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

It is noted in the record that the applicant was ordered removed from the United States by an immigration judge on February 5, 1992, pursuant to section 241(a)(1)(B), based on her entry into the United States without inspection. On August 3, 1999, the immigration judge denied the applicant's motion to reopen and request for administrative closure. Form I-205, Warrant of Removal/Deportation, was issued at San Diego, California, on August 21, 2001.

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 failed to meet this burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.