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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2004

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: Self-represented

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 he had been convicted of a felony and three misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that the director made "a terrible mistake" because he is not the person with the criminal record. He indicates that he has requested the State of California Department of Justice, Bureau of Criminal Identification, in Sacramento to send his criminal record to prove his case, and he needs 60 days in which to submit a brief and/or evidence. To date, however, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The records of the Superior Court of California, County of Los Angeles, contained in the record of proceeding, reflects the following:

- (1) On August 26, 1993, the applicant was convicted of assault with a deadly weapon or great bodily harm-force, not firearm, in violation of 245(a) PC, a felony. He was placed on probation for a period of 3 years, and ordered to spend 180 days in jail.

Assault with a deadly weapon is a crime involving moral turpitude. *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974); *Matter of Ptsai*, 12 I&N 790 (BIA 1968).

The director, in his decision, determined that the applicant was also convicted of the following misdemeanors:

- (2) On August 27, 1996, for battery.
- (3) On June 2, 1999, for drunk driving.
- (4) On December 31, 2001, for vandalism.

The record of proceeding, however, is devoid of the arrest reports, the court's charging documents, the final court dispositions, or any information pertaining to the alleged convictions listed in Nos. (2), (3), and (4) above. Therefore, this finding of the director will be withdrawn.

The applicant, however, was convicted of the felony offense listed in (1) above. He is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act. The applicant is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a crime involving moral turpitude. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.