



U.S. Citizenship
and Immigration
Services

A-1

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: 11/12/08

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:

[Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES

DISCUSSION: The application was denied by the Director, Vermont 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 the applicant failed to submit the court dispositions of his prior arrests. The director, therefore, denied the application.

On appeal, counsel states that the documents requested were previously sent, and submits copies of court documents.

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 that on May 9, 1999, in Nashua, New Hampshire, the applicant was arrested and charged with Count 1, driving while intoxicated - 2nd offense (DWI-2nd); Count 2, disobeying police officer; and Count 3, forgery. On August 12, 1999, the applicant was convicted of Count 1. A "nolle prossed" was entered as to Counts 2 and 3.

The applicant was convicted of DWI-2nd offense, a misdemeanor. Although the applicant was requested, in a notice of intent to deny dated August 21, 2003, to submit the final court dispositions of every, and any, charges against him, he failed to submit the court disposition for his conviction of DWI, first offense. A conviction of two or more misdemeanors committed in the United States would render the applicant ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a).

Despite counsel's assertion, on appeal, that he timely filed the requested court documents, there is no evidence in the record that he submitted the court dispositions of all of the applicant's arrests, including his first DWI arrest. Accordingly, the director's decision to deny the TPS application will be affirmed.

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.