



U.S. Citizenship
and Immigration
Services

MM

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: OCT 01 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:

[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, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 he had been convicted of two or more misdemeanors committed in the United States. He further determined that the applicant failed to submit the court's final disposition of an arrest on December 6, 1998 in Fairfax County. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant had two traffic convictions, that they are not misdemeanors in the jurisdiction where the offenses occurred, and that the judge issued an order of non prosecution on the government's motion; therefore, the Service's (now Citizenship and Immigration Services (CIS)) claim of two convictions is untrue. Counsel further asserts that CIS' claim that the applicant was arrested on December 6, 1998 for destruction to private property is untrue.

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 August 29, 1999, in Fairfax County, Virginia, the applicant was arrested and charged with driving while intoxicated, in violation of section 18.2-266, Code of Virginia, a Class 1 misdemeanor. On November 8, 1999, the applicant entered a plea of guilty to the offense, and the court found the applicant guilty as charged. He was sentenced to imprisonment for a period of 30 days suspended, fined \$600, and his driver's license was suspended for 12 months.
2. On August 10, 2000, in Fairfax County, Virginia, the applicant was arrested and charged with driving after forfeiture of license, in violation of section 18.2-272, Code of Virginia, a Class 1 misdemeanor. On April 27, 2001, the applicant was convicted of the charge. Imposition of sentence was suspended, he was required to pay a fine, and his driver's license was revoked.
3. On September 29, 2000, the applicant was arrested and charged with "operator to give full time and attention," in violation of section 82-4-24, Code of Virginia. On April 27, 2001, the court ordered a "nolle prosequi" on the case.
4. The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that on December 6, 1998, in Fairfax County, Virginia, the applicant, under the name of [REDACTED] was

arrested and charged with destruction of private property. The court's final disposition of this arrest is not contained in the record of proceeding although the applicant was requested on September 3, 2002, to submit the court record for this arrest. The applicant, on appeal, submits a statement, "I have never been arrested by the Fairfax County Police in Fairfax Virginia for destruction of property at any time." The applicant, however, failed to submit any supporting documentary evidence from the police department and from the court to establish his claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel's assertion that the applicant's convictions are for traffic offenses and that they are not misdemeanors is not persuasive. The record reflects that the applicant was convicted for violating Virginia Code section 18.2-266, and section 18.2-272, Class 1 misdemeanors (paragraphs 1 and 2 above). Pursuant to section 18.2-11 of the Virginia Code, the authorized punishments for conviction of a misdemeanor are: "(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both." The applicant's convictions are, therefore, misdemeanors as defined in 8 C.F.R. § 244.1

Consequently, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on 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.

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.