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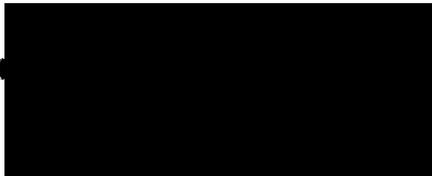
OFFICE: TEXAS SERVICE CENTER

DATE: **AUG 12 2005**

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:



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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 denied the application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a statement.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or

due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, shows that the applicant was arrested for the following offenses:

- (1) Arrested on May 18, 2000, in Kingsville, Texas, for arson.
- (2) Arrested on August 9, 2001, in Kingsville, Texas, for Count 1, aggravated assault with a deadly weapon; Count 2, engaging in organized criminal activity; and Count 3, "unlawful restraint: expose to SBI."

In a notice of intent to deny dated May 20, 2003, the applicant was requested to submit police history and clearance checks for every city where the applicant has lived for the past five years, and the final court dispositions of all arrests, including the arrests listed in Nos. 1 and 2 above. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 10, 2003.

On appeal, the applicant asserts that he has "only one felony on my record. If you want more information call my juvenile probation officer."

The record shows that the applicant was 15 years of age when he was arrested for the offense listed in No. 1 above, and he was 16 years when he was arrested for the offense listed in No. 2 above. While an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act, the applicant has failed to submit court documents to establish that these offenses were, in fact, heard in a juvenile court. *See Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981).

The applicant has failed to provide any evidence revealing the final court disposition of his arrests, detailed in Nos. 1 and 2 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

Beyond the decision of the director, it is noted that the Form I-821, Application for Temporary Protected Status, indicates that the applicant's date of entry into the United States was March 26, 2000. Additionally, Form I-213, Record of Deportable/Inadmissible Alien, dated April 27, 2000, and Form I-862, Notice to Appear, also dated April 27, 2000, both indicate that the applicant claimed to have entered the United States without inspection on January 26, 2000. Based on the applicant's claimed entry into the United States in 2000, the applicant, therefore, could not have met the requirements that he has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the appeal will also be dismissed for this reason.

It is noted that on April 22, 2002, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.