



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: PHOENIX

DATE:

AUG 12 2009

[WAC 99 161 53179]

IN RE:

Applicant:



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 District Director, Phoenix, Arizona, 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 district director denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence.

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.

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.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on November 12, 1992, in El Mirage, Arizona, the applicant was arrested and charged with making a false report to a police officer, a misdemeanor. The FBI report shows that the applicant was subsequently convicted of this offense, and he was sentenced to serve 24 hours in jail. The actual final court disposition of this offense is not contained in the record although the applicant was requested on February 29, 2000, and again on November 15, 2000, to submit the court disposition of this arrest.
- (2) The records of the City of Phoenix Municipal Court, Arizona, indicate that on February 16, 1995, Case No. [REDACTED] (arrest date December 9, 1994), the applicant was convicted of failure to provide proof of financial responsibility, 28-1253.D Arizona Code, a misdemeanor. He was ordered to pay \$1178 in fines and costs.
- (3) The records of the City of Phoenix Municipal Court, Arizona, indicate that on July 3, 2000, Case No. [REDACTED] (arrest date May 26, 2000), the applicant was convicted of soliciting prostitution, 23-52(a)(2) Arizona Code, a misdemeanor. He was ordered to serve 15 days in jail, and placed on probation for a period of 6 months.
- (4) The applicant furnished letters from the City of Phoenix Municipal Court, dated May 24, 2000 and December 30, 2003, regarding an offense for driving without a valid license (Case No. [REDACTED] 28-473C Arizona Code. The letters indicate that after a thorough check of the court's computer database, they are unable to locate any information regarding the applicant. The letters further indicate that the retention period in that court is "five to seven years for misdemeanor cases," and that the cases could have been purged from their records after five years, scratched by the Prosecutor's Office, or heard in another court.

On appeal, the applicant asserts that based on the letter from the Phoenix Municipal Court (No. 4 above), he has no criminal record on file.

The purging or destruction of court records, however, is not evidence that conviction(s) had been dismissed (No. 4 above). Further, it is noted that the court letter indicates that the case may have been heard in another court. It may be assumed that the applicant would have known where his court hearing took place.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions (Nos. 2 and 3 above) and because he failed to provide the final court disposition of his arrest detailed in No.1 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the district director's decision to deny the application will be affirmed.

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.