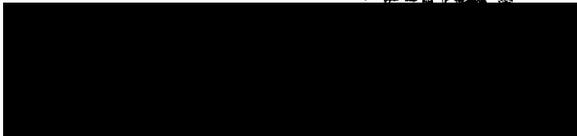


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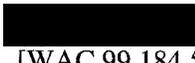
**U.S. Citizenship
and Immigration
Services**

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prevent clearly unwarranted
invasion of personal privacy**



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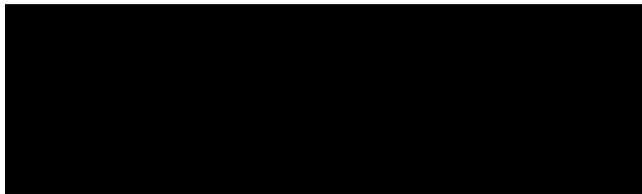
OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 17 2005**

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IN RE:

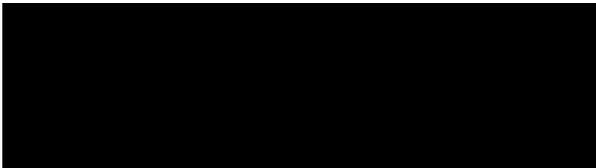
Applicant:



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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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 she had been convicted of a felony offense. The director, therefore, denied the application.

On appeal, counsel states that the applicant's conviction is "currently being expunged, pursuant to the Petition and Order under Penal Code 1203.4 or Penal Code 1203.4a."

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The Federal Bureau of Investigation (FBI) Identification Record contained in the record of proceeding indicates that the applicant was arrested on October 30, 1998, and charged with burglary in violation of section 459 PC, a felony, and possession of burglary tools, a misdemeanor.

On October 13, 2003, the applicant was requested to provide a certified copy of the final court disposition of all arrests since her arrival in the United States. In response, the applicant provided a copy of the final court disposition of her arrest on October 30, 1998.

According to the final court disposition, the applicant was charged with burglary in violation of section 459 PC, a felony. On November 16, 1998, the court amended the charge to a misdemeanor pursuant to section 17(b)(4) PC, and convicted the applicant of burglary as a misdemeanor. She was placed on summary probation for a period of three years, sentenced to 90 days in the Los Angeles County Jail less credit for 8 days served, and ordered to pay restitution in the amount of \$100. There is no indication in the court disposition that the applicant was formally charged with possession of burglary tools, a misdemeanor.

The director denied the TPS application based upon the applicant's felony conviction.

On appeal, counsel for the applicant states that he is seeking an expungement of the applicant's record. Counsel's seeking of an expungement is not relevant, as discussed below.

The record indicates that the applicant has not been convicted of a felony, and she has only been convicted of one misdemeanor. Since the record contains no evidence that the applicant has been convicted of a felony or two or more misdemeanors, it cannot be concluded that she is ineligible for TPS on this basis. Therefore, the director's decision will be withdrawn.

However, the application cannot be approved. The applicant has not provided sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant has provided documents reflecting her qualifying continuous residence and physical presence in the United States from July 24, 1999 through September 1999, but she has provided only generic rent receipts to establish her continuous residence and physical presence in the United States prior to July 24, 1999.

Therefore, the case will be remanded. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

It is noted that the applicant was apprehended by the United States Border Patrol on April 17, 1998, in Brownsville, Texas. She told the officers that she had crossed the Rio Grande from Matamoros, Mexico, on April 16, 1998, and that her final destination was Los Angeles, California. The applicant was placed in deportation proceedings. On September 22, 1999, the proceedings were administratively closed by an Immigration Judge in Los Angeles, California, because the applicant provided evidence she had applied for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion.