



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 17 2005

[EAC 99 203 52748]

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: Self-represented

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

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further 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 he had been convicted of a felony offense committed in the United States. The director, therefore, denied the application.

On appeal, the applicant expresses remorse for his past behavior and requests that he be given a second chance.

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 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.

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.

Based on information contained in the Federal Bureau of Investigation (FBI) fingerprint results report and the accompanying New Jersey State Criminal History Detailed Record, the director determined that the applicant was ineligible for TPS because he was convicted of a felony offense.

The report reflects the following:

1. On May 14, 1992, in Flemington, New Jersey, the applicant was arrested and charged with larceny, in violation of NJ 2C:20-3A, a felony. The FBI report shows that the applicant was convicted of this offense on August 19, 1994.
2. On April 9, 1996, in East Brunswick, New Jersey, the applicant was arrested and charged with Count 1, forgery, NJ 2C:21-1A(2), and Count 2, hinder apprehension, NJ 2C:29-3B(4). The FBI report shows that the applicant was acquitted of these charges.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the complete, actual court dispositions of the applicant's arrests to establish that he was in fact convicted and/or acquitted of the crimes listed in Nos. 1 and 2 of the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all of his arrests.

In addition, the record of proceedings also shows that on June 10, 1998, the applicant attempted to enter the United States at Hidalgo, Texas, by presenting to the inspecting officer a State of New Jersey birth certificate and a social security card belonging to [REDACTED] in order to facilitate his entry into the United States. It was determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C)(ii) of the Act, for falsely claiming to be a United States citizen. The applicant was processed for expedited removal, and he was subsequently removed from the United States under file [REDACTED]. There is no evidence in the record that the applicant is the recipient of an approved waiver of such grounds of inadmissibility, or that he even filed an application for such a waiver (Form I-601, Application for Waiver of Grounds of Inadmissibility).

However, if the applicant was, in fact, convicted of a felony or two or more misdemeanor offenses, the convictions would render the applicant ineligible for TPS for which no waiver is available.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports, the court's final dispositions of all his arrests, and a Form I-601 waiver application.

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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.