

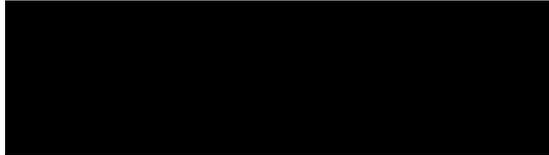
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 20 2005

[WAC 99 177 52745]

IN RE:

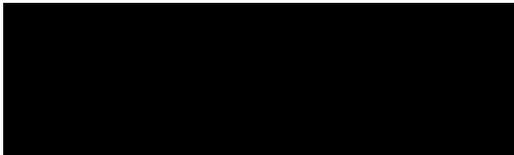
Applicant:



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.

for 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 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 denied the application after determining that the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on a drug-related conviction. The director also noted that the applicant has convictions dating back to 1982, that he is a prior deported aggravated felon, and that he failed to disclose his convictions on his TPS application.

On appeal, counsel asserts that the applicant was never in the United States in 1982, and that he does not have any convictions. He further asserts that he needs 90 days to obtain the applicant's Federal Bureau of Investigation (FBI) record and to supplement his brief with the results of the FBI record. To date, no additional information has been submitted by counsel.

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).

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The FBI fingerprint results report, the records of the Department of Homeland Security (DHS) database, and the Arizona Department of Public Safety Criminal History Report, contained in the record of proceeding, reflect the following:

- (1) The DHS database shows the following offenses (under the name of [REDACTED] dangerous drugs on September 27, 1979; burglary on April 9, 1982; escape from custody on March 23, 1982; possession of marijuana on November 21, 1986; possession of a weapon on February 6, 1987; selling marijuana on April 28, 1987; robbery on April 1, 1988; dangerous drugs on September

21, 1988; and dangerous drugs on August 24, 1989. The final court dispositions of these arrests are not contained in the record.

- (2) The FBI report shows that the applicant was arrested in Chandler, Arizona, on October 7, 2000, for "DUI-LIQUOR/DRUGS/VAPORS/COMBO." The final court disposition of this arrest is not contained in the record.
- (3) The Arizona criminal history report shows that on June 10, 1994, in Phoenix, Arizona, the applicant was convicted of failure to provide proof of financial responsibility. The actual final court disposition of this offense is not contained in the record.
- (4) The Arizona criminal history report shows that on January 18, 1996, in South Phoenix, Arizona, the applicant was convicted of motor vehicle financial responsibility required. The actual final court disposition of this offense is not contained in the record.
- (5) The FBI report shows that [REDACTED] aka [REDACTED] was arrested in Madera, California (a) on October 26, 1998, for DUI: alcohol/drugs; and (b) on March 7, 1999, for Count 1, "PRVNT/DISUADE WITNS THREAT/FORCE;" Count 2, attempted murder; Count 3, threaten crime with intent to terrorize; and Count 4, "FORCE/ADW NOT FIREARM; GBI LIKELY." The final court disposition of this arrest is not contained in the record.

Based on information contained in the record of proceeding, detailed above, the director determined that the applicant was ineligible for TPS because of his convictions and because he was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the based on his drug-related convictions.

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 final court dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report, the DHS database, and the Arizona criminal history report. Furthermore, there is no evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the final court dispositions of all of his arrests.

It is noted that the applicant was deported from the United States on February 27, 1990. The applicant was again deported from the United States, under the name of [REDACTED] on July 20, 1998.

It is further noted that on the Form I-589, Request for Asylum in the United States, and on the Form G-325A, Biographic Information, both dated July 29, 1991, the applicant listed his file number as [REDACTED] and his name as [REDACTED] and other names used: [REDACTED]

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.