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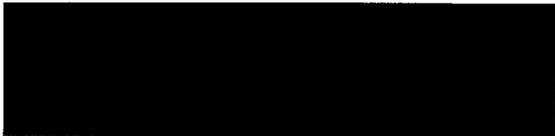
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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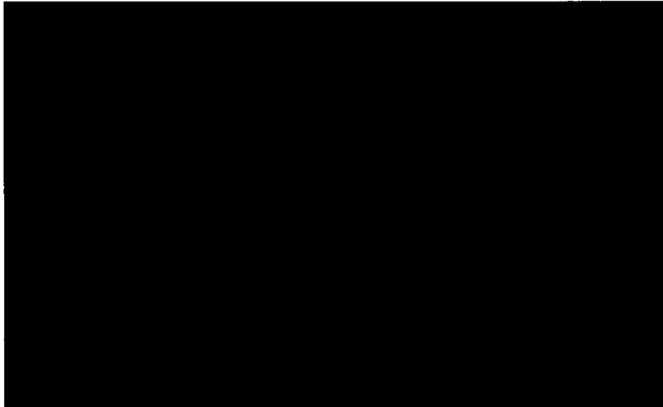
OFFICE: TEXAS SERVICE CENTER

DATE: JUL 05 2005

[SRC 99 211 50477]

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

The applicant claims to be a native and citizen alternately of Honduras and of El Salvador 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 she found the applicant ineligible for TPS due to his criminal record.

On appeal, counsel submits a statement and a separate brief.

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 parole; 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.

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.

An 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 record reveals the following offenses and immigration violations:

- (1) On June 2, 1990, the applicant, giving his name as [REDACTED] was arrested at Plano, Texas, and charged with one count of Aggravated Assault, Case No. [REDACTED]
- (2) On August 10, 1990, the applicant, identified as described above, pleaded Guilty to the Felony Offense of Aggravated Assault, Case No. [REDACTED] and received a punishment

- of payment of restitution and Confinement in the Texas Department of Criminal Justice, Institutional Division for Seven (7) years;
- (3) On August 10, 1990, the 219th District Court of Collin County, Texas, suspended imposition of the sentence above, and ordered the applicant placed on 7 years probation;
 - (4) On September 7, 1990, the applicant, giving his name as [REDACTED] and his nationality and citizenship as El Salvadoran, was issued an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, at Laredo, Texas, and was placed in deportation proceedings under file number [REDACTED];
 - (5) On October 3, 1990, the Immigration Judge, El Paso, Texas, issued a final order of deportation to El Salvador, and the applicant was deported from the United States to El Salvador on October 16, 1990, via New Orleans, Louisiana;
 - (6) On February 16, 1993, the applicant was apprehended by the United States Border Patrol at or near Laredo, Texas, giving his name as [REDACTED] and his nationality and citizenship as Honduran, and was placed in deportation proceedings under file number [REDACTED];
 - (7) On August 20, 1993, the applicant was apprehended by the United States Border Patrol at or near Laredo, Texas, giving his name as [REDACTED] and his nationality and citizenship as Honduran, and was placed in deportation proceedings under file number [REDACTED]. On December 7, 1993, the Immigration Judge, San Antonio, Texas, ordered the applicant deported from the United States to Honduras in absentia. This A file contains a Warrant of Deportation issued at San Antonio, Texas, on December 15, 1993;
 - (8) On August 15, 1995, upon his release from the Taylor County Detention Center, where he was detained for Public Intoxication, the applicant, giving his name as [REDACTED] and his nationality and citizenship as Honduran, was then detained in INS custody at Val Verde County Detention Center, Del Rio, Texas, and placed in deportation proceedings under file number [REDACTED]. On August 29, 1995, the Immigration Judge, San Antonio, Texas, ordered the applicant deported from the United States to Honduras, and the applicant was deported from the United States to Honduras on September 26, 1995, via Houston, Texas;
 - (9) On January 4, 1999, upon his release from the Taylor County Detention Center, where he was detained for possession of marijuana – misdemeanor, the applicant, giving his name as [REDACTED] and his nationality and citizenship as Honduran, was apprehended by the United States Border Patrol, Del Rio, Texas, and was notified of the intent/decision to reinstate the prior order under file number [REDACTED];
 - (10) The applicant submitted a certified copy of a City of Abilene [Texas] criminal history record dated June 13, 2003, under the name [REDACTED] with aliases [REDACTED] reflecting the following charges:
 - (a) August 14, 1995, Case No. [REDACTED], Public Intoxication;
 - (b) December 4, 1998, Case No. [REDACTED], Resisting Arrest; and,
 - (c) January 30, 2002, Case No. [REDACTED], Public Intoxication;
 - (11) On August 12, 2004, under the name [REDACTED] was arrested by the Sheriff's Office, Abilene, Texas, and charged with Assault Causes Bodily Injury: Family Member.

On September 27, 2002, the applicant was issued a notice of intent to deny and was asked to provide certificates of disposition for all arrests, final court dispositions for all convictions, police history and clearance checks for each city of residence, and any other evidence to demonstrate that he has never been convicted of any crimes or never given a sentence of more than five days. In response, the applicant

submitted a certified Taylor County Court disposition dated December 11, 1998, in the name of [REDACTED] for the charge of Evading Arrest, a Class "B" offense, committed on December 4, 1998, reflecting a Guilty finding, fine and punishment of 30 days in jail. The applicant also submitted a certified copy of the Municipal Court of Abilene, Texas, disposition, under the name of [REDACTED] on the charge of Public Intoxication, committed on January 30, 2002, reflecting a Guilty finding, and a conviction date of March 12, 2002. Finally, the applicant submitted a statement regarding the August 14, 1995, arrest for Public Intoxication, that: "This case was not found at any court in Abilene, Texas. There are no records." It is noted, however, as detailed at Number 8, above, that upon release for this charge of Public Intoxication, the applicant was deported.

The director found that the applicant was ineligible for TPS based upon two misdemeanor charges, evading arrest and public intoxication, and denied the application on July 28, 2003.

On appeal, counsel for the applicant states that the applicant "denies and/or requires strict proof of, the convictions for which he is allegedly ineligible for Temporary Protected Status (TPS)." In a subsequently submitted brief, counsel asserts that the applicant denies being responsible for, or requires CIS to prove, the two misdemeanor convictions upon which the denial is based. Counsel also states that the applicant "who is a national of El Salvador" applied for TPS "in due time" and denies any ineligibility under Title 8, Section 354(a). No additional evidence has been submitted in support of the appeal.

It is noted that, on appeal, counsel indicates that the applicant is an El Salvadoran national, while the applicant has indicated on the Form I-821, Application for Temporary Protected Status, in these proceedings, that he is Honduran.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). In addition, review of all the A-files associated with the applicant's fingerprints, reveals that the applicant was also convicted of a Felony, Aggravated Assault, as detailed above at Number 2. Consequently, the director's decision to deny the application for this reason will be affirmed.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under sections 212(a)(2)(A)(i)(I) and Section 212(a)(2)(B) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under these sections of the Act.

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.