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

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



FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 07 2005**
[WAC 02 223 53021]

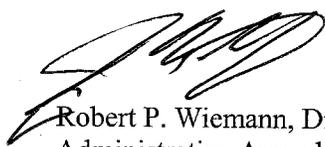
IN RE: Applicant: [REDACTED]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 director denied the application because the applicant had been convicted of two felonies and three misdemeanors committed in the United States.

On appeal, the applicant requests reconsideration of his case because he needs to support his family. He submits character references from three individuals.

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.

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 Federal Bureau of Investigation (FBI) fingerprint results report and the State of California Department of Justice, Bureau of Criminal Identification (CADJ) report reveal the following:

- (1) On May 30, 1986, in Los Angeles, California, the applicant was arrested for selling-furnishing marijuana-hashish.
- (2) The CADJ report shows that on July 25, 1986, in Los Angeles, California, the applicant was arrested for possession of marijuana for sale.
- (3) On May 14, 1987, in Burbank, California, the applicant (name used: [REDACTED]) was arrested for grand theft auto.

- (4) On May 30, 1987, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for grand theft auto. The FBI report shows that the applicant was subsequently convicted of taking vehicle without owner's consent/vehicle theft.
- (5) The CADJ report shows that on June 1, 1987, in Los Angeles, California, the applicant was arrested for taking vehicle without owner's consent/vehicle theft. The report further shows that on June 2, 1987, the applicant was convicted of this misdemeanor offense.
- (6) On November 1, 1987, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for grand theft auto. The FBI report shows that the applicant was subsequently convicted of false identification to a peace officer.
- (7) The CADJ report shows that on November 3, 1987, in Los Angeles, California, the applicant was arrested for Count 1, taking vehicle without owner's consent/vehicle theft; and Count 2, false identification to a peace officer. The report shows that on November 4, 1987, the applicant was convicted of Count 2 (a misdemeanor).
- (8) On January 15, 1988, in Norwalk, California, the applicant (name used: [REDACTED]) was arrested for attempted burglary.
- (9) On March 1, 1998, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for grand theft auto.
- (10) The CADJ report shows that on October 4, 1988, in Los Angeles, California, the applicant was arrested for grand theft auto.
- (11) On February 2, 1989, in Phoenix, Arizona, the applicant (name used: [REDACTED]) was arrested for "theft stolen vehicle."
- (12) The CADJ report shows that on June 2, 1989, in Los Angeles, California, the applicant was arrested for attempted grand theft: miscellaneous. The report shows that on July 17, 1989, the applicant was convicted of taking vehicle without owner's consent/vehicle theft, a felony.
- (13) On July 28, 1989, in San Diego, California, the applicant was arrested for vehicle theft. The FBI report shows that the applicant was subsequently convicted of this offense.
- (14) The CADJ report shows that on September 22, 1990, in Los Angeles, California, the applicant was arrested for grand theft: vehicles, vessels/etc. The report shows that on September 25, 1990, the applicant was convicted of taking vehicle without owner's consent/vehicle theft, a misdemeanor.
- (15) The FBI report shows that on October 18, 1994, in Beverly Hills, California, the applicant (name used: [REDACTED]) was arrested for Count 1, grand theft auto; and Count 2, possession of burglary tools. The CADJ report shows that on February 17, 1995, the applicant was convicted of grand theft: vehicles, vessels/etc, a felony.

Based on information contained in the FBI and CADJ reports, the director determined that the applicant was ineligible for TPS because he was convicted of two felony and three misdemeanor offenses detailed in Nos. 5, 7, 12, 14, and 15 above.

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 of the crimes listed in the CADJ and FBI reports, and as listed in the director's decision. It should also be noted that the CADJ report is not a court document obtained from the courts where the hearings took place. Therefore, the finding of the director that the applicant was convicted of two felony and three misdemeanor offenses will be withdrawn.

However, the applicant has failed to comply with the director's request of February 20, 2003, to submit the final court dispositions of his arrests, detailed above, from the courts where the hearings took place. The applicant is, therefore, ineligible for TPS based on his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to deny the TPS application will be affirmed.

The FBI report further shows that the applicant was apprehended at Yuma, Arizona, on October 27, 1989, and that he was subsequently removed from the United States to Honduras on November 28, 1989.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on May 8, 2002, after the initial registration period for Hondurans (from January 5, 1999 to August 20, 1999) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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.