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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

PUBLIC COPY

M

[Redacted]

FILE:

[Redacted]

OFFICE: TEXAS SERVICE CENTER

DATE: MAR 17 2005

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:

[Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On appeal, the applicant states that he did answer the director's request and had submitted all the evidence and documents requested.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on November 7, 1993, for aggravated battery, and on October 18, 1997, for driving under the influence. In a notice of intent to deny the application dated August 8, 2002, the director noted that although the applicant furnished the final disposition of his arrest for driving under the influence, he failed to submit the final disposition of his arrest for aggravated battery. He was, therefore, advised to submit the final disposition of this arrest. The director concluded that the applicant had abandoned his application and denied the application on October 31, 2002.

The record of proceeding, however, shows that the applicant did furnish the final court disposition of his arrest for aggravated battery. The document was received by the Texas Service Center on September 27, 2002, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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.

The record reveals the following offenses:

- (1) On January 7, 1993, in Dade County, Florida, Case No. [REDACTED] applicant was arrested and charged with aggravated battery, a felony. On January 10, 1994, the applicant was convicted of the charge. He was placed on probation for a period of one year, and ordered to pay \$255 in fines and costs.

- (2) On October 18, 1997, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with driving under the influence, a misdemeanor. On December 8, 1997, the applicant was convicted of the charge. He was placed on probation for a period of 6 months, ordered to pay fines, complete DUI school and 50 hours of community service, and his driver's license was suspended for 6 months.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [REDACTED] 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). The crime of aggravated battery (No. 1 above) involves moral turpitude. *Guillen-Garcia v. INS*, 999 F.2d 199(7<sup>th</sup> Cir. 1993). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction, detailed above, found to involve moral turpitude.

The applicant is ineligible for TPS due to his felony conviction detailed in No. 1 above, and because he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available for inadmissibility under this section of the Act. See section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the appeal will be dismissed.

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.