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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 25 2005

[WAC 02 252 51976]

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.

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, 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 Nicaragua 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 either a felony or two or more misdemeanors.

On appeal, the applicant states that he was erroneously convicted and that he is in the process of obtaining a dismissal of the charges. He requests that he be allowed 180 days for the criminal court judge to make a decision. To date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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.

The record reveals the following offenses:

- (1) On January 14, 1997, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date January 10, 1997), the applicant (name used: [REDACTED]) was indicted for Count 1, receiving/concealing stolen property, 496(a) PC, a misdemeanor; and Count 2, receiving/concealing stolen property, 496(a) PC, a misdemeanor. On January 14, 1997, the applicant was convicted of Count 1. He was placed on probation for a period of 24 months, ordered to spend 30 days in the county jail, and pay a restitution fine in the amount of \$100. Count 2 was dismissed.
- (2) On May 8, 2001, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 15, 2001), the applicant (name used: [REDACTED]) was convicted of Count 1, driving with suspended-revoked license, 14601.5(a) VC, a misdemeanor; and Count 2, giving false information to a peace officer, 31 VC, a misdemeanor. The applicant was placed on probation for a period of 3 years, ordered to pay a fine of \$300 or serve 10 days in the county jail, perform 5 days of "Cal Trans," and pay a restitution fine in the amount of \$100 as to Count 1. The applicant was placed on probation for a period of 3 years as to Count 2.
- (3) On August 20, 2002, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 5, 2002), the applicant (name used: [REDACTED]) was indicted for violation of protective order/injunction, 273.6(a) PC, a misdemeanor. On November 8, 2002, the court dismissed the case and terminated proceedings.

While the applicant, on appeal, asserts that he was erroneously convicted and that he is in the process of obtaining a dismissal of the charges, no evidence was furnished to establish this assertion. Simply going on

record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the court records clearly show that the applicant was convicted of the offenses listed as Nos. 1 and 2 above. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Accordingly, the applicant is ineligible for TPS due to his three misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on July 3, 2002, after the initial registration period for Nicaraguans (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.