

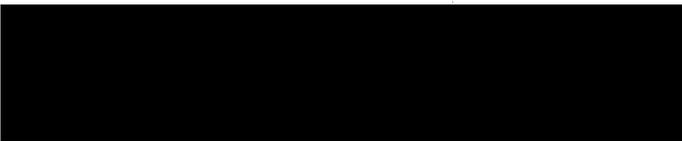
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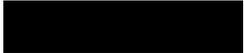


U.S. Citizenship
and Immigration
Services

M1



FILE:



OFFICE: TEXAS SERVICE CENTER

DATE: MAY 05 2005

[SRC 00 241 52687]

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 he found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel submits a statement and additional evidence.

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.

The Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested on November 13, 2001, in Gretna, Louisiana, for Count 1, theft of goods; and Count 2, injuring public records. The applicant was requested on September 5, 2003, to submit police clearances from every city where she had lived for the past five years, the final court disposition of all arrests, including the final disposition of this arrest listed on the FBI report. Because the applicant failed to respond to the request, the director denied the application on November 18, 2003.

On appeal, counsel asserts that the Second Parish Court for the Parish of Jefferson, the court where the applicant was processed and adjudicated, has lost the applicant's record, and that there is no file other than the minute entries that he is enclosing. He submits the following court record reflecting that:

- (1) On February 7, 2003, in the Second Parish Court, Jefferson Parish, Louisiana, Case No. [REDACTED] the applicant was found guilty of contempt, a misdemeanor. She was ordered to pay \$100 in fines.
- (2) On July 23, 2003, in the Second Parish Court, Jefferson Parish, Louisiana, Case No. [REDACTED] the court amended the charges of theft of goods, RS 14:67.10, to attempted theft, [REDACTED] The applicant entered a plea of guilty to the amended charge of attempted theft, a misdemeanor, and she was ordered to pay \$200 in fines and costs. The outcome of the charges for "injuring public records," listed as Count 2 of the FBI report, is not reflected in the court document.

Counsel, on appeal, further asserts that the applicant "was not charged with two misdemeanors, but rather just one, and most important, the record will show that she was inappropriately charged as an adult and a plea of

guilty entered on her behalf. The record is filled with irregularities that may render the entire proceeding null and void.”

The record, in this case, shows that the applicant was arrested on November 13, 2001, for theft of goods and injuring public records. According to the applicant's birth certificate, contained in the record of proceeding, she was born in Honduras on October 24, 1983. The applicant was 18 years of age when she was arrested for these offenses, and she was 19 years of age when she was convicted of contempt and attempted theft. Therefore, counsel's assertion that the applicant was charged and convicted while still a minor is without merit.

The applicant is ineligible for TPS due to her two misdemeanor convictions, detailed 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 will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed her TPS application on July 5, 2000, 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). Therefore, the application must also be denied for this reason.

The record contains a Warrant of Removal/Deportation, Form I-205, issued in Miami, Florida, on March 3, 1999, based on the final order of removal by an immigration judge on November 25, 1998.

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.