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

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 24 2005**
[SRC 99 146 52891]

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.


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 the applicant had been convicted of a felony.

On appeal, the applicant states that he strongly disagrees with the director's decision and requests that it be reversed so that his application may be granted.

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, 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 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 record reveals that on March 29, 1991, the applicant was arrested in California and charged with one count of possession of base rock cocaine for sale in violation of section 11350 H&S. On October 10, 1990, the applicant was arrested by police officers in Los Angeles, California, and charged with one count of possession of base rock cocaine for sale in violation of section 11351 (A) H&S. On November 30, 1992, the applicant pled guilty to this felony charge in the Municipal Court of the City and County of San Francisco of the State of California. Court No [REDACTED]

On appeal, the applicant merely disagrees with the director's decision and requests that it be reversed so that his application may be granted.

The record contains court documents indicating that the applicant has been convicted of one felony. Therefore, the applicant is ineligible for TPS due to his record of at least one felony conviction, detailed

above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction detailed above. The applicant is also ineligible for TPS due to his inadmissibility under 212(a)(2)(A)(I)(II) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

Additionally, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of a felony and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act. Therefore, the application shall be denied for this additional reason.

Finally, on October 15, 1993, the applicant related his biographical data to an employee of the Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS or the Service). He claimed that he had been born in Vera Cruz, Mexico on February 2, 1967 and that his father and mother were Mexican. He stated that his father's name was [REDACTED] and his mother's name was [REDACTED]. Additionally, the record shows that the applicant was deported to Mexico on September 29, 1993 based upon his claim to being a Mexican citizen. However, the record now contains a "late registration" birth certificate showing that the applicant was born on April 21, 1963 in Honduras to a different mother and father. Based upon these separate claims by the applicant, it is determined that he has failed to establish that he is a native and citizen of Honduras. Therefore, the application is denied for this additional reason.

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.