



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[EAC 99 200 50675]

OFFICE: VERMONT SERVICE CENTER

DATE: **NOV 03 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application 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 his criminal record.

On appeal, counsel asserts the applicant's claim of eligibility for TPS and indicates that an additional 90 days is needed in order to provide final court dispositions in the applicant's criminal cases. Counsel's request is dated May 17, 2003, however, to date, no further response has been received.

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.
8 C.F.R. § 244.1.

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 under the name [REDACTED]

- (1) On December 31, 1991, the applicant was arrested in Glendora, California and charged with one count of taking a vehicle without permission; and
- (2) On December 31, 1991, the applicant was arrested in Glendora, California and charged with one count of receiving known stolen property.

Pursuant to a letter dated March 8, 2001, the applicant was requested to submit the final court disposition for each of the charges detailed above and a police record from Fairfax, Virginia, police station. In response, the applicant submitted a handwritten explanation describing his arrests and his version of the disposition of his criminal charges in California.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on May 7, 2003.

On appeal, counsel asserts that the applicant obtained a copy of his Fairfax County Police Criminal History record and a copy of his Certificate of Search of the Criminal Indexes for the Superior Court of Los Angeles,

California, which he claims to have submitted to INS at [REDACTED] in May of 2001.

The record of proceedings contains a copy of a Criminal History Record Information Request from Fairfax, Virginia which shows that the applicant has no adult arrest record as of March 29, 2001. The record of proceedings does not contain copies of the California Certificate that counsel states had been submitted to INS in May of 2001. Neither were there copies of the California Certificate submitted by counsel or the applicant on appeal. Although counsel requested on appeal an additional 90 days in which to submit final court dispositions, to date, no such documentation has been provided.

The applicant has failed to provide sufficient evidence revealing the final court disposition of his arrests detailed above. Although he has provided a criminal history record from Fairfax, Virginia, this does not mitigate the need to provide all final court dispositions for his California arrests. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, 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.