

identity info data deleted to
protect privacy and security
information and personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

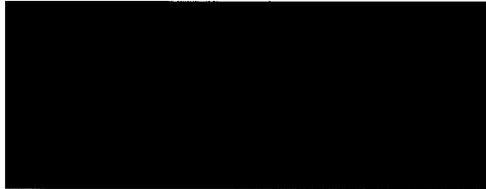


FILE: [REDACTED]
[EAC 03 015 50148]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 08 2005

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, reopened, and denied again 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 initially denied the application on March 19, 2003, due to abandonment, because the applicant failed to appear for his fingerprint appointment or request that his fingerprint appointment be rescheduled. The director informed the applicant that there is no appeal from a denial due to abandonment, but he could file a motion to reopen the matter within 30 days of the issuance date of the denial decision.

On April 18, 2003, the applicant filed a motion to reopen the matter. On motion, the applicant stated that he failed to appear for his fingerprint appointment because he was incarcerated at the time.

On June 16, 2004, the director denied the application because he found the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant submits a statement.

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 record reveals the following offenses:

1. On November 6, 1996, the applicant was arrested for rape and sexual misconduct. On June 4, 2002, the applicant pled guilty in the County Court of the State of New York, Nassau County, to a reduced charge of harassment in the second degree in violation of PL 240.26, a violation, and was sentenced to fifteen days in the county jail. (Docket # [REDACTED])
2. On January 28, 2003, the applicant was found guilty in the County Court of the State of New York, Nassau County, of criminal mischief in the fourth degree in violation of PL

145.00 of the New York State criminal code, a fourth degree class A misdemeanor. He was adjudicated to be a youthful offender and was sentenced to a one-year imprisonment and ordered to pay a \$1000 fine. (Case [REDACTED])

3. On November 9, 2000, the applicant was arrested in Durham, North Carolina, under the name [REDACTED] and charged with breaking or entering a motor vehicle in violation of section 14-56, a felony. To date, the applicant has not provided the final court disposition of this arrest.

In response to the Notice of Intent to Deny dated March 26, 2004, counsel stated that the offenses detailed in No. 3 above was "still open." Counsel further stated, "I cannot provide a disposition for the case. I informed Mr. [REDACTED] of the situation and would request and [sic] extension to investigate this matter." To date, counsel has not provided the final court disposition or any other court document relating to this arrest.

On appeal, counsel for the applicant asserts that the applicant has only been convicted of one misdemeanor offense. She states, "the other offense was a violation as per the penal law of New York."

"Harassment in the second degree," PL 240.26, is classified as a "violation" by the State of New York. According to section 10.00(3) of the New York State Penal Law, "violation" means an offense that can carry a possible sentence of imprisonment for up to fifteen days. The fact that the State of New York's legal taxonomy classifies the charge of "harassment in the fourth degree" as a "violation" rather than a "misdemeanor" is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes. Consequently, for immigration purposes, this offense is considered a "misdemeanor" as defined at 8 C.F.R. § 244.1.

The court documents contained in the record indicate that the applicant has been convicted of one misdemeanor, detailed in No. 1 above. The applicant was adjudicated to be a youthful offender in connection with the offense detailed in No. 2 above. Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals has affirmed the well-settled principle that an act of juvenile delinquency is not a crime in the United States and, therefore, is not a conviction for immigration purposes. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981); *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981).

Since the applicant has failed to provide the final disposition of his felony arrest detailed in No. 3 above, we are unable to determine his eligibility for TPS because of a record of one felony or two misdemeanor convictions. However, the fact remains that the applicant is ineligible for TPS due to his failure to provide the final court disposition of the arrest detailed in No. 3 above. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has also failed to submit an official photo identification document to establish his identity as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

The application will be dismissed for the reasons stated above, with each considered as an independent and alternative basis for denial. 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.