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

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FILE:



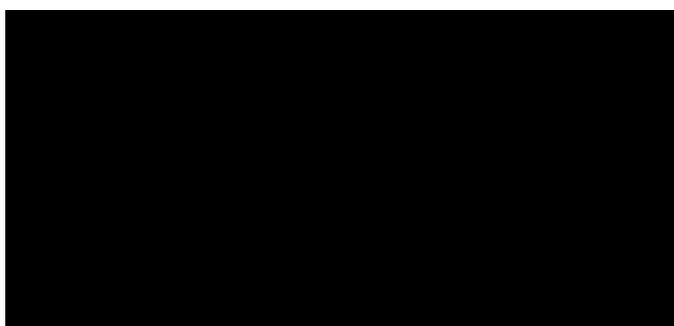
Office: CHICAGO DISTRICT OFFICE

Date: JUL 06 2006

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IN RE:

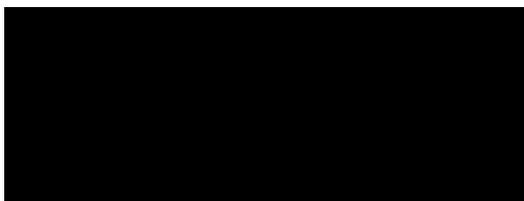
Applicant:



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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office *RPW*

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 the applicant was convicted of a felony or two misdemeanors committed in the United States.

On appeal, counsel for the applicant states:

The CIS reviewing officer abused her discretion over the Appellant's application for TPS in that she counted a petty offense (where the maximum penalty of the Waukegan ordinance provides for a fine and a maximum of zero days incarceration sentence) as a misdemeanor offense making the Appellant ineligible for TPS; and other grounds for the appeal are being examined.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 applicant's Federal Bureau of Investigation Criminal History Record, contained in the record of proceeding, reflects the following:

- (1) On November 8, 1987, the Waukegan, Illinois, Police Department, arrested the applicant and charged him with battery and littering, Arrest Case Number H-4642.
- (2) On June 23, 1997, the Waukegan, Illinois Police Department, arrested the applicant and charged him with two counts of battery, public indecency and with "breach of peace." Arrest Case Number H4642.
- (3) On May 27, 2002, the Waukegan, Illinois, Sheriff's Office arrested the applicant and charged him with "contempt of court."

The applicant submits copies of pages from a Judgment Book provided by the Clerk of the Circuit Court of the Nineteenth Judicial Circuit in Lake County, Illinois, showing that the charges listed at Items #1 and #2 above were determined to be 'NOLLE PROSSED' on June 28, 1993 and May 19, 1998, respectively.

The record contains the applicant's Federal Bureau of Investigation Identification Record showing that he was also arrested on May 3, 2002, by the Sheriff's Office in Waukegan, Illinois, for "Contempt of Court."

The applicant did not provide the dispositions of his two contempt of court arrests on May 3, 2002, and on May 27, 2002, listed above.

The applicant's charge, disposition and sentences query and case synopsis documents issued by the Clerk of the Circuit Court of the Nineteenth Judicial Circuit in Lake County, Illinois, contained in the record reflect the following:

- (1) On May 29, 1987, the applicant was arrested for "DRVNG UNDER INFL OF ALCOHOL," Case# [REDACTED], a misdemeanor. He pled guilty and was convicted of that offense on July 15, 1987, placed under supervision, sent to DUI school and fined \$600.
- (2) On May 29, 1987, the applicant was arrested for "DRVNG UNDER INFL/0.10 ALCOHOL," Case# [REDACTED] The case was determined to be "NONSUIT" on July 15, 1987.
- (3) On November 8, 1987, the applicant was arrested for "DRVNG UNDER INFL/0.10 ALCOHOL," Case# [REDACTED] The case was determined to be "NOLLE PROSEQ" ON June 28, 1993.

- (4) On November 8, 1987, the applicant was arrested for "DRIVING ON SUSPENDED LICENSE," [REDACTED] The case was determined to be "NOLLE PROSEQ" ON June 28, 1993.
- (5) On November 8, 1987, the applicant was arrested for "STOP/STAND/PARK/NON-BUS DIST," Case# 87TR00107834. The case was determined to be "NOLLE PROSEQ" ON June 28, 1993.
- (6) On November 8, 1987, the applicant was arrested for "PEDESTRIAN/INFLUENCE DRUG/ALCH," Case# [REDACTED] The case was determined to be "NOLLE PROSEQ" on June 28, 1993.
- (7) On November 18, 1987, the applicant was arrested for "TRANS/CARRY AL LIQ/DRIVER," Case# [REDACTED] The case was determined to be "NOLLE PROSEQ" on June 28, 1993.
- (8) On June 30, 1997, the applicant was arrested for "BATTERY/MAKES PHYSICAL CONTACT," "DISORDERLY CONDUCT," and "PUBLIC INDECENCY/SEX," Case# 97CM00004256. The charges were determined to be "NOLLE PROSEQ CONVERSION" on May 19, 1998.
- (9) On October 17, 1998, the applicant was arrested for "THROWING SHARP OBJECTS ON STRT ," Case# [REDACTED] not a misdemeanor or a felony. He was convicted of that offense on November 19, 1998, placed under supervision and fined \$50.
- (10) On November 8, 1987, the applicant was arrested for "FAIL RIGHT-WAY/EMERG PRIV ROAD," Case# [REDACTED] The charge was determined to be "NOLLE PROSEQ on June 28, 1993.
- (11) On December 17, 2002, the applicant was arrested for 'DRIVING ON SUSPENDED LICENSE,' Case# [REDACTED] The charge was dismissed on January 29, 2003.

The record shows that the applicant has been convicted of a misdemeanor. Therefore, the director was incorrect in his determination that the applicant had been convicted of one felony or two or more misdemeanors.

It is noted that the record shows that the applicant has failed to provide the dispositions for his two arrests for contempt of court.

After a review of the record, it is determined that the applicant is not eligible under the provisions for late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The initial registration period for Honduras was from January 5, 1999 through August 20, 1999. The applicant filed his initial TPS application on July 7, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

It is noted that on November 3, 1997, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under Section 245 of the Act, asserting that a visa petition had been approved in his behalf. Although counsel asserts that adjustment of status appears to have been granted, it never was, due to the applicant's removal proceedings. On October 15, 2002, the District Director of the Chicago, Illinois, office of Citizenship and Immigration Services (CIS) issued a letter to the applicant and his former counsel entitled "Notification of Proper Filing Procedure." The district director explained that as the applicant was under removal

proceedings before the Executive Office for Immigration Review which had sole jurisdiction over his application, his I-485 application was no longer pending with CIS. The applicant filed his TPS application more than nine months after action concerning this Form I-485 was terminated. The applicant filed a second Form I-485 on June 5, 2003 under Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000. The filing of this application did not cause him to be eligible for late initial registration because it must have been pending during the initial registration period which ended on August 20, 1999.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application must be denied for this reason.

It is noted that, in removal proceedings held on July 7, 1988, an Immigration Judge in San Antonio, Texas, granted the applicant voluntary departure from the United States on or before October 6, 1988, with an alternative order of deportation if the applicant failed to depart as required. There is no evidence in the record that the applicant departed from the United States as ordered.

It is noted that the record contains an unadjudicated Form I-601, Application for Waiver of Ground of Excludability.

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.