



U.S. Citizenship
and Immigration
Services

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FILE:

[SRC 99 139 50287]

OFFICE: TEXAS SERVICE CENTER

DATE MAY 30 2006

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office (AAO) 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 she found the applicant ineligible for TPS due to her criminal record of two misdemeanor convictions.

On appeal, the applicant 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.

The record reveals the following offenses:

- (1) On August 7, 1999, the applicant was arrested by the Sheriff's Office, Dallas, Texas, and charged with "Charge 1 – Theft 50 2399;"
- (2) On August 9, 1999, the applicant was placed in removal proceedings after being encountered at the Dallas County Jail following her arrest above;
- (3) On August 25, 2002, the applicant was arrested by the Police Department, Irving, Texas, and charged with "Charge 1 - Fail to Identify Fugitive From Justice."

In response to the director's request for additional evidence, the applicant submitted:

- (1) An Order Dismissing Deferred Proceedings, Dallas County Clerk's Office, dated April 1, 2004, setting aside the cause [REDACTED] "Fail ID Fug," and discharging the applicant from probation, as of that date;
- (2) The Deferred Adjudication Judgment, entered on March 31, 2003, to the charge "Failure Identify Fugitive," a Class B Misdemeanor, indicating a plea of nolo contendere, a fine, and 12 months community supervision;
- (3) The Conditions of Community Supervision, dated March 31, 2003, for cause [REDACTED];
- (4) The Affidavit for Arrest Warrant or Capias, indicating that on August 25, 2002, the applicant was charged with running a red light, giving a false or fictitious name and date of birth, and indicating that at the time of the offense, the applicant was a fugitive from justice because she had an outstanding warrant for a seatbelt violation;

- (5) An Order, Dallas County Criminal Court, Dallas County Clerk's Office, dated April 28, 2000, setting aside the cause [REDACTED] "Theft 50," and discharging the applicant from probation, as of that date;
- (6) The Deferred Adjudication Judgment, entered on October 25, 1999, to the charge "Theft 50," a Class B Misdemeanor, indicating a plea of guilty/nolo contendere, a fine, and 12 months community supervision;
- (7) The Conditions of Community Supervision, dated October 25, 1999, for cause [REDACTED] B; and,
- (8) The Affidavit for Arrest Warrant, indicating that on August 7, 1999, the applicant was charged with Theft 50-500.

The director determined that the applicant had been convicted of two misdemeanors, and therefore denied the application on November 23, 2004.

On appeal, the applicant states that she graduated from high school and provides the support for her family. She explains that one of the charges resulted from not having her driver's license with her and not being aware that she had an outstanding matter. She states that people make mistakes in life and she asks for consideration of her appeal and a second chance. In support of the appeal, the applicant submits a letter from the Office Manager, Traditional Floorcovering, Deland, Florida, stating that the applicant has been employed since May of 2002, and has an excellent work ethic.

Under section 101(a)(48) of the Immigration and Nationality Act, a conviction means a formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, where the alien has entered a plea of guilty or nolo contendere, or has admitted sufficient facts to warrant a finding of guilt, and, the judge has ordered some form of punishment, penalty or restraint on the alien's liberty, regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. The record reflects that the applicant pled guilty and/or nolo contendere to both charges. Theft 50 is defined as a Class B Misdemeanor punishable by a fine and confinement not to exceed 180 days. The Texas Penal Code Section 38.02 reflects that "Failure to Identify" is a Class C Misdemeanor, punishable by a fine not to exceed \$500, unless the defendant was a fugitive from justice at the time of the offense, in which case it is classified as a Class B Misdemeanor. The Affidavit for Arrest Warrant or Capias, dated August 25, 2002, (Number 4 above) indicates that at the time of the offense the applicant was a fugitive from justice, and therefore, the results of the proceedings in that matter constitute a misdemeanor conviction for immigration purposes. The record reflects that the applicant is ineligible for TPS due to her record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.