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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE **SEP 28 2006**

[WAC 99 209 50174]

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:

Self-represented

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 had been convicted of two or more misdemeanors committed in the United States.

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.

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 August 21, 1997, in Los Angeles, California, the applicant was arrested and charged with Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, unlicensed driver, 12500(a) VC, a misdemeanor, [REDACTED]. On August 21, 1997, the Municipal Court of L.A - Metro Branch Judicial District, County of Los Angeles, California, ordered the complaint amended by interlineations to add the misdemeanor offense of 23109(c) VC, "exhibition of speed/engage aid/abet," as to Count 3. The court found the applicant guilty as to Count 3. He was placed on probation for a period of 24 months, and ordered to pay the total of \$702 in fines and costs. Counts 1 and 2 were dismissed.
- (2) On August 3, 1998, in Los Angeles, California, the applicant was arrested and charged with Count 1, hit and run/property damage, 20002(a) VC, a misdemeanor; Count 2, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 3, no proof of car insurance, 16028(a) VC, an infraction, under Case [REDACTED]. On August 5, 1998, in the Municipal Court of L.A - Metro Branch Judicial District, County of Los Angeles, California, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, and ordered to pay the total of \$946 in fines and costs. Counts 2 and 3 were dismissed.
- (3) On July 10, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date July 6, 2001), the applicant was arrested for Count 1, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor; and Count 2, battery on a person with injury, 242-243(d) PC, a misdemeanor. On July 12, 2001, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months under the condition that he serve 90 days in the county jail,

ordered to pay the total of \$163 in fines and costs, and enroll in a 12-month batterer's counseling program and comply with the terms of that program. Count 2 was dismissed.

On appeal, the applicant requests that he be forgiven for violating the laws of this country and promises that he will not commit any more criminal violations. He states that he needs to work and support his United States citizen children.

The applicant is ineligible for TPS due to his three misdemeanor convictions, detailed in Nos. 1, 2 and 3 above. The applicant's statements made on appeal have been considered; nevertheless, there is no waiver available to an alien found ineligible under this section. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The record shows that on October 4, 1999, in Los Angeles, California, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.