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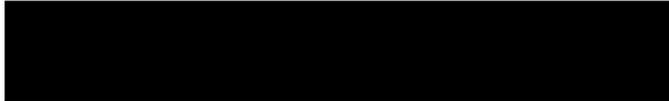
Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 148 77871 as it relates to WAC 99 231 51383]

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:

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office *for*

DISCUSSION: The initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The case will be remanded to the director for further action.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named has not indicated in which state or territory he is a member of the bar in good standing; therefore, he is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. The applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant is a 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 applicant filed an initial application for TPS under receipt number WAC 99 231 51383. The director denied the initial application on December 6, 2000, after determining that the applicant had abandoned his application because he failed to report for fingerprinting as scheduled.

However, the record of proceedings reveals that the applicant's fingerprints were taken as scheduled but that they were not discernible.

The record also shows that the director denied the application on May 24, 2004, after apparently reopening the application because the applicant again failed to report for fingerprinting as scheduled. The record reveals that the applicant subsequently was fingerprinted during his re-registration application, and the FBI fingerprint results report dated March of 2006 indicates that he was arrested in 2001.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The Federal Bureau of Investigation fingerprint results report dated March of 2006, indicates that the applicant was arrested on October 27, 2001 by officers of the San Francisco, California police department, and charged with infliction of corporal injury to spouse/cohabitation.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish whether he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all of his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, the appeal from the denial of the re-registration will also be remanded.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.