

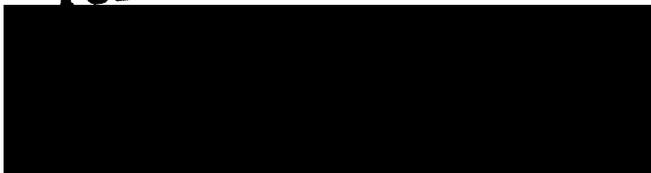
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



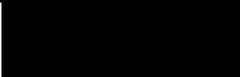
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUN 14 2007

consolidated herein

[SRC 99 217 52449]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and 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 that the applicant had failed to submit requested court documentation relating to his criminal record.

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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 7, 1999.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

Further, 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 charges:

1. On February 24, 1995, the applicant under the name [REDACTED] with the birth date given as December 31, 1934, was charged with “Comm Veh Mark Viol,” Case Number [REDACTED], disposition *Nolle Prosequi* on June 6, 1996;
2. On December 9, 1993, under the name [REDACTED] the applicant was apprehended by the United States Border Patrol and placed in removal proceedings;
3. On July 29, 1992, the applicant, under the name [REDACTED] date of birth given as May 25, 1953, was arrested by the Metro-Dade Police Department, Miami, Florida, and was charged with Conservation-Environment-Litter, a third degree felony; and,
4. On July 8, 1990, under an unknown name and alien registration file number, the applicant was apprehended by the United States Border Patrol and placed in removal proceedings.

Pursuant to a Notice of Intent to Deny and Revoke dated November 8, 2003, the applicant was requested to submit certified copies of the arrest records and the final court dispositions for the charges detailed above.

In response, the applicant submitted a statement from the Eleventh Judicial Circuit Court of Florida, certifying that a search of the records of that office failed to reveal a felony or misdemeanor record under the name of [REDACTED] with date of birth May 23, 1953, and noting that court rules specify retaining court records for five years for misdemeanors and ten years for felonies (not adjudicated guilty). The applicant also submitted a Miami-Dade Police Department records check dated November 17, 2003, indicating that the

applicant had no local record under the name [REDACTED] or under the name [REDACTED]. The applicant submitted an affidavit dated November 20, 2003, attesting that he used the name [REDACTED] only at the time of entering the country in December 1993, and that his true name is [REDACTED]. The applicant submitted a copy of his Employment Authorization document (EAD) under the record number [REDACTED] under provision 274A.12(C)(12), with validity from January 27, 2003 through July 5, 2003. He also resubmitted a Honduran birth certificate, with English translation, issued on March [illegible], 1999, and a document issued on June 21, 1999, from the Honduran Consulate General, Miami, Florida, identifying him as a Honduran national.

It is noted that with his initial application, the applicant also submitted numerous original documents and photocopied documents relating to his continuous residence and continuous physical presence in the United States during the requisite time periods.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application. It is noted that the director's decision indicates in the body of the letter that the application was denied as of December 1, 2003, while the "Date" at the head of the letter has been left blank. The photocopy of the mailing envelope reflects that the letter was postmarked as of February 9, 2004.

On appeal, the applicant states that he was sentenced "to credit for time served, to wit: Three (3) Days," and ordered to pay restitution in the amount of \$250. The applicant states that this is the only time he has had problems with the police and that he has never been sentenced to more than one year's confinement. In support of the appeal, the applicant submits:

1. A Miami-Dade Police Department record search dated February 19, 2004, indicating no local record, under the name [REDACTED]
2. An Order of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County [Florida], dated December 23, 1992, Case Number [REDACTED] State of Florida vs. [REDACTED] ordering the judgment and finding of guilt previously entered on November 23, 1992, court costs and guilty plea, be vacated, set aside and held for naught, with the applicant resentenced on a separate order;
3. An Order in Case Number [REDACTED], recorded on January 7, 1993, finding the applicant guilty of the charge "Florida Litter Law [sic]" upon the entry of a plea of nolo contendere, sentencing the applicant to credit for time served, to wit 3 days, and court ordered restitution in the amount of \$250;
4. The applicant's fingerprints in the name of [REDACTED], Case Number [REDACTED]
5. The Metropolitan Dade County Correction and Rehabilitation Department, Jail Booking Record, Court Case Number [REDACTED] indicating the booking date of July 29, 1992, and release date of July 30, 1992; and,
6. The Complaint/Arrest Affidavit, indicating the applicant's arrest on July 29, 1992, and charges under the Florida Litter Law (Felony), Statute 403.413 and 21-81A.

The applicant had also previously submitted the Circuit and County Courts of the Eleventh Judicial Circuit of Florida In and For Miami-Dade County, misdemeanor record dated January 14, 2002, reflecting a *Nolle Prosequi* disposition dated June 6, 1996, in the applicant's arrest of February 24, 1995, Case Number [REDACTED] "Comm Veh Mark Viol," listed above.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

Although deferred adjudication of the applicant's conviction was granted in the third degree felony case detailed above, and the applicant was resentenced under a plea of nolo contendere, in that case, under the Immigration and Nationality Act, Sections 101(a)(48)(A)(i), (ii), and (B), the applicant is still considered as having been convicted of a felony. The evidence of record indicates that the applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying nationality. The record indicates that when the applicant was apprehended by the United States Border Patrol at or near El Paso, Texas, on or about December 9, 1993, he stated that he was a native and citizen of Guatemala. According to the statements taken in the Form I-213, Record of Deportable/Inadmissible Alien, the applicant stated he was born in Guatemala and attended school there. The Form I-217, Information for Travel Document or Passport, also prepared on December 9, 1993, indicates that the applicant had in his possession a Guatemalan birth certificate at the time of his apprehension. The Consulate General of Guatemala, Houston, Texas, on December 21, 1993, issued a document permitting the applicant's return to Guatemala. The record also includes a Warrant of Deportation dated May 31, 1994, issued at El Paso, Texas, following the Order of the Immigration Judge, El Paso, Texas, dated May 16, 1994, ordering the applicant be deported to Guatemala, in absentia. Guatemala is not a TPS designated State.

In his applications for TPS, the applicant has presented himself as Honduran. On January 18, 2002, the applicant filed an Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in which he indicated his removal to Guatemala on May 16, 1994, but stated he is a national of Honduras and asserted his eligibility for TPS. Also on January 18, 2002, the applicant submitted an Application for Stay of Deportation or Removal, based upon his assertion of Honduran nationality and eligibility for TPS. With this form, he submitted a copy of the biographic page of a Honduran passport in his name issued by the Consulate General, Miami, Florida, on January 17, 2002. The record contains a Honduran birth certificate, with English translation, issued on March [illegible], 1999, and a document issued on June 21, 1999, by the Honduran Consulate General, Miami, Florida, identifying the applicant as a Honduran national. The record does not contain any documentation bearing the applicant's photograph and/or fingerprint, from the applicant's country of origin that was issued prior to his date of entry into the United States, and prior to his assertion of Guatemalan nationality. Therefore, the evidence of record is insufficient to conclusively establish the applicant's nationality, and the application must also be denied for this reason.

The application will be denied for the above stated reasons, 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.