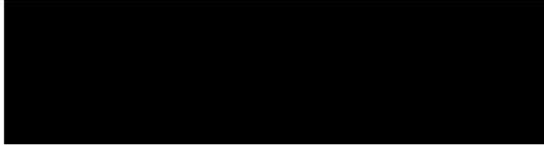


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and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

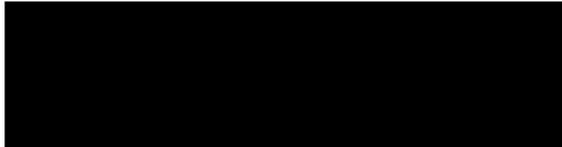
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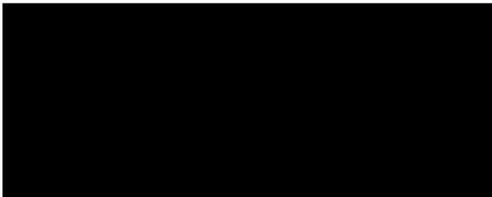
Applicant:



APPLICATION:

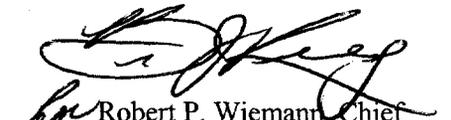
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 determined that the evidence furnished by the applicant, in response to his notice of intent to deny dated September 25, 2000 [reissued on December 7, 2000], did not properly address the issue regarding the adverse evidence before the Service, and no court documents had been provided. He concluded that the applicant appeared inadmissible to the United States under section 212(a)(2) of the Act, and denied the application.

On appeal, counsel asserts that: (1) the applicant never received the notice of intent to deny; (2) the decision to deny "incorrectly states that the alien responded to a Dec 7, 2000 notice on Nov 16, 2000;" this clearly is impossible because November 16 pre-dates December 7; (3) the director's decision does not clarify the basis for denial; (4) the applicant does not have any felony convictions nor any drug convictions; and (5) the "so-called 2 misdemeanors referred to but not stated are in fact not misdemeanors;" they were for driving without a license, and are "being expunged." While counsel indicates that a brief and/or evidence (court records) will be furnished within 30 days, to date, the file contains no further response from the applicant or counsel.

A review of the record of proceeding shows that in a notice of intent to deny (NOID) dated September 25, 2000, the director advised the applicant that she intended to deny the application and stated: "When a decision that will be adverse to the application is based on information considered by the Service, and of which the applicant is unaware, the Service must notify the applicant and allow a period of time for the applicant to rebut the information." The director also stated: "The Service is considering the following information: Form I-821, as filed by the applicant, indicates that false statements have intentionally been made upon the application. This form is an official United States government document signed under the penalty of perjury, and it appears that a deliberate, calculated attempt to withhold material facts from the Service has been made to fraudulently obtain an undeserved benefit. [REDACTED]." The director concluded: "As the application currently exists, the evidence of record indicates that the applicant does not meet all the criteria stipulated by the INA."

Because the CSC correctly noted that the September 25, 2000 NOID was mailed to the wrong address [REDACTED] a duplicate NOID was issued on December 7, 2000, to the applicant's most recent address at that time [REDACTED].

The applicant's response to the director's September 25, 2000 NOID was received on November 10, 2000. The applicant stated, "A motion to reconsider your denial of my TPS is hereby made on the grounds that I am being accused [sic] of not being a [H]onduran national when in fact I was born in Siguatepeque, Comayagua, Honduras on [REDACTED]. He submitted copies of his Honduran birth certificate and the provisional passport issued on November 1, 1999, by the Consulate of Honduras in Los Angeles, California.

The director stated that the December 7, 2000 NOID requested that the applicant submit evidence to refute information obtained from the FBI indicating that he was eligible for the benefit sought; however, the applicant responded by submitting a letter discussing the issue of his nationality and citizenship and provided copies of documents relating to his citizenship. She added, "Nothing regarding the circumstances for which the ITD was issued was addressed." The director maintained that since the letter and evidence submitted did not properly address the issue regarding the adverse evidence before the Service, and no court documents had been provided, the application would be adjudicated upon the record as it exists. She concluded that, "the applicant

appears inadmissible to the United States under 212(a)(2) of the INA" and denied the application on April 10, 2001.

It is noted that the notices of intent to deny, issued on September 25, 2000, and on December 7, 2000, and the director's denial decision dated April 10, 2001, did not fully explain the derogatory information known to Citizenship and Immigration Services (CIS). While the director listed on the NOID, "[REDACTED]" she did not advise the applicant that intentionally making false statements or deliberately attempting to withhold material facts on his Form I-821 would render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act. Nor did the director advise the applicant to submit arrest reports and final court dispositions of all of his arrests, or any other information necessary for the adjudication of the application.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C).

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 8 C.F.R. § 244.4(a).

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.

The Federal Bureau of Investigation (FBI) fingerprint results report and the records of the Department of Homeland Security (DHS) database, contained in the record of proceeding, reflect the following:

- (1) The FBI report indicates that on July 21, 1995, the applicant was arrested in Los Angeles, California, for taking a vehicle without the owner's consent, a felony offense.
- (2) The DHS database indicates that on October 23, 1997, in California, the applicant was arrested for driving without a valid driver's license, [REDACTED] VC. The report shows that the applicant was subsequently convicted of this offense on March 27, 1998.
- (3) The FBI report indicates that on November 2, 1998, in Los Angeles, California, the applicant, under the alias of [REDACTED] was arrested for Count 1, assault with a deadly weapon-no firearms/great bodily harm, a felony, with a referral back to the 1995 arrest regarding taking a vehicle without the owner's consent, as Count 2.
- (4) The FBI report indicates that on November 26, 1999, in Norwalk, California, the applicant was arrested for possession of a narcotic controlled substance, a felony; and,

- (5) The DHS database indicates that on November 26, 1999, in California, the applicant was arrested for driving without a valid driver's license. The report shows that the applicant was subsequently convicted of this offense on November 30, 1999.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the complete, actual final court dispositions of the applicant's arrests to establish that he was, in fact, convicted of the offenses listed in the FBI report and the DHS database, and that he is inadmissible to the United States under section 212(a)(2) of the Act. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all 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 arrests, and for consideration and discussion of all issues pertinent to this case. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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.