



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
[EAC 01 252 51361]

Office: VERMONT SERVICE CENTER

Date: OCT 30 2007

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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, Vermont Service Center (VSC). The application is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed an initial TPS application on June 21, 2001, under CIS receipt number EAC 01 252 51361. The VSC director denied the application on August 26, 2002, because the applicant had failed to submit requested court documentation relating to an arrest on April 16, 1989, wherein the applicant was charged with "Disorderly Intoxication," and, "Carrying A Concealed Weapon".

On appeal, the applicant states that it was extremely difficult to obtain the records requested. With the appeal, counsel submits a certification, dated September 20, 2002, from the Deputy Clerk of the Circuit Court of the Eleventh District of Florida, in and for Dade County, and a letter, also dated September 20, 2002, from the Miami-Dade Police Department, both indicating that there is no record of any felony or misdemeanor committed by the application within that jurisdiction.

However, these documents cannot be relied upon as both the name and date of birth on the documents submitted are different from the name and date of birth on the applicant's arrest record. It is noted that both of these records are for: [REDACTED], DOB: 11/29/1954. However, the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his TPS application, reflects that: on April 16, 1989, the applicant, under [REDACTED] with DOB: 09/29/1954, was arrested by the Dade Police Department, Dade County, Florida, and charged with:- Charge 1: "DISORDERLY INTOXICATION," a misdemeanor; and, Charge 2: "CARRYING CONCEALED WEAPON - KNIFE," a misdemeanor.

It is also noted that with his TPS application, the applicant submitted a "Certification of Disposition" from the Kings County Criminal Court of the City of New York, pertaining to violation (Docket Number: [REDACTED]) on May 19, 1992. The applicant entered a plea of guilty to violating Section 242.20, a misdemeanor. The court imposed a sentence of 1-year Conditional Discharge.<sup>1</sup>

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;

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<sup>1</sup> It is noted that this document indicates a different date of birth (11/11/1954) for the applicant.

- (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. 8 C.F.R. § 244.1.

Pursuant to a letter dated April 24, 2002, the director requested the applicant submit the final court disposition for each of the charges detailed above. The applicant failed to submit a response to the request. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application.

The documents submitted by the applicant on appeal do not address the final court disposition of the above-listed charges arising from his arrest on April 16, 1989.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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 failed to establish his eligibility for late initial registration. It is noted that the applicant filed his TPS application after the initial registration period for Hondurans, from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on June 21, 2001. For this additional reason, the application must be denied.

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.