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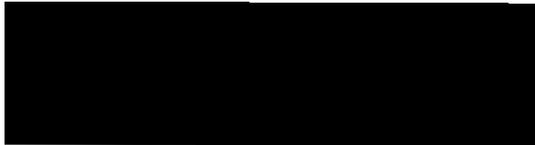
U.S. Department of Homeland Security
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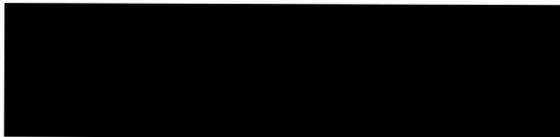


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 28 2008**
[EAC 08 195 51938, *appeal*]
[EAC 99 143 50843]

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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 was convicted of a felony committed in the United States.

On appeal, the applicant states:

It's been over 19 years on the Abduction charge and the Burglary and Assault was dismissed and no record with the Court. The charge on 03/16/1999 Domestic Assault and battery was also dismissed. On 1/20/2001 hit and run-personal injury attended property Felony Class 5 was 7 years ago and this case was a misunderstanding.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

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 reflects the following offenses:

- (1) On July 27, 1989, the applicant was convicted of abduction by a Judge in the Circuit Court of Fairfax County, Virginia, a felony. (Criminal [REDACTED])
- (2) On November 2, 2001, the applicant was charged with being the driver of a vehicle leaving the scene of an accident in which he was involved, a felony. On February 5, 2002, he was convicted of a lesser degree of hit and run, a misdemeanor, by a Judge in the Traffic Court of Prince William County, Virginia. (Case No. [REDACTED])

On appeal, the applicant notes that it has been over 19 years since he was convicted of the abduction charge and argues that his conviction for hit and run was a misunderstanding. These arguments do not mitigate his convictions outlined above.

The applicant is ineligible for TPS due to his record of at least one felony conviction detailed above. Section 244(c)(1)(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 is affirmed.

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.