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U.S. Citizenship  
and Immigration  
Services

417

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 26 2006  
[EAC 99 196 53714]

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: 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.

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, Vermont Service Center. The application is now before the Administrative Appeals Office 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 he 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.

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.

The record reveals the following offenses:

1. On August 21, 1993, the applicant was arrested in Los Angeles, California, and charged with inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor. The record contains a letter dated August 5, 1998, from [REDACTED] Hearing Officer, Office of the City Attorney, Los Angeles, California, stating that a hearing was held in the Office of the City Attorney regarding this arrest, and the matter was resolved at the hearing with no criminal complaint filed against the applicant. (File No. A5392).
2. On August 1, 1997, the applicant was arrested in Chelsea, Massachusetts, and charged with drinking alcohol in public in violation of s11, 5. On August 4, 1997, the charge was dismissed in the Chelsea District Court, Chelsea, Massachusetts, upon payment of court costs. (Docket No. [REDACTED])
3. On October 9, 1999, the applicant was arrested in Malden, Massachusetts, and charged with driving under the influence of alcohol in violation of c90 § 24. On January 13, 2000, the applicant pled guilty to this charge in the Malden District Court, Malden, Massachusetts, and the case was continued without a guilty finding until January 12, 2001, provided the applicant complied with certain conditions. (Docket No. [REDACTED])
4. On April 18, 2001, the applicant was arrested in Boston, Massachusetts, and charged with operating a vehicle under the influence of alcohol. To date, the applicant has not provided the final court disposition of this arrest.

5. On September 25, 2003, the applicant was arrested in Chelsea, Massachusetts, and charged with assault and battery in violation of C264 S13A and one count of assault in violation of chapter 2764, section 13(a), a misdemeanor. To date, the applicant has not provided the final court disposition of this arrest.

Pursuant to a letter dated April 27, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant provided court documents relating to the offenses detailed in No. 3 above; however, the applicant failed to provide any court documents reflecting the final court dispositions of the offenses detailed in Nos. 1, 2, 4, and 5 above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application.

On appeal, the applicant asserts that the Los Angeles Police Department agreed to forward a certified copy of his criminal record to the Vermont Service Center at his request, but the director did not allow sufficient time to receive the applicant's criminal record prior to denying the application. The applicant submits a letter dated May 16, 2003, [REDACTED] Chief of Police, Los Angeles Police Department, stating that a certified copy of the applicant's arrest record would be forwarded directly to the Vermont Service Center and court documents reflecting the final court disposition of Nos. 2 and 3 above.

The applicant has provided a court document establishing that he has pled guilty to one misdemeanor (No. 3 above); however, the applicant has failed to provide court documents reflecting the final court dispositions of his arrest(s) detailed in Nos. 4 and 5 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 not submitted sufficient evidence to establish his identity and nationality as described at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

It is noted that an Immigration Judge in Boston, Massachusetts, ordered the applicant removed to Honduras in absentia on March 24, 1999. The record contains an outstanding warrant of removal issued by the District Director, Boston, Massachusetts, on May 24, 1999.

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.