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U.S. Citizenship
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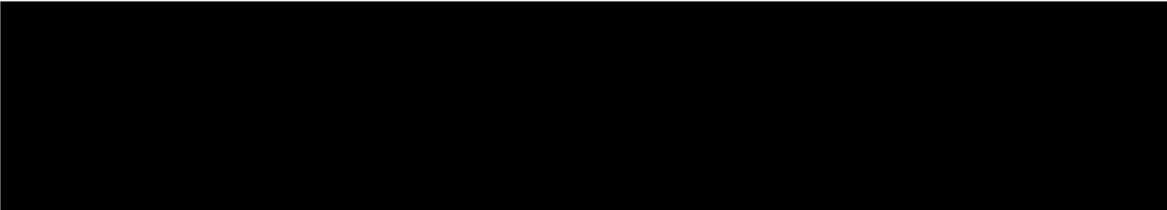
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 05 104 78467]

Date: FEB 19 2008

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 office that originally decided your case. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 citizen of Nicaragua 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 his initial TPS application on June 23, 2003 under CIS receipt number LIN 03 208 51967. The director denied that application on February 26, 2004 because the applicant failed to establish his qualifying continuous physical presence in the United States during the requisite periods. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 3, 2005, and indicated that he was registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the application was wrongly denied. According to counsel, the applicant was not re-registering for TPS, but was submitting a late initial application. Counsel states that the applicant is eligible for late registration because his mother is a TPS-eligible alien. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The director found that the applicant had not previously been granted TPS. Therefore, he was not eligible to re-register for TPS. Consequently, the director denied the application.

On appeal, counsel for the applicant states that the director wrongly denied the TPS application because the applicant did not submit a TPS re-registration. According to counsel, the applicant submitted a late initial registration for TPS, and was eligible to do so, because his mother is a TPS-eligible alien.

Counsel correctly states that the applicant submitted a late initial registration and not a re-registration, and it appears that the applicant's mother is a TPS-eligible alien. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2 (g). However, it is noted that a Federal Bureau of Investigation (FBI) fingerprint results report indicates that the Columbus, Ohio Sheriff's Department arrested the applicant on November 13, 2006 for "Corruption of Minor Fel."

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that he was in fact convicted of the crime listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents 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 his arrests. The director shall enter a new decision.

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.