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U.S. Citizenship
and Immigration
Services



MI

FILE: [REDACTED]
[LIN 99 159 52078]

OFFICE: INDIANAPOLIS

DATE: **AUG 05 2005**

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Indianapolis, Indiana, 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 district director denied the application after determining that the applicant had abandoned his application by failing to respond to a request to submit certified court documentation relating to his criminal record.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on May 6, 1999, at the Nebraska Service Center. The application was referred to the Indianapolis, Indiana, district director on August 17, 2000. On January 23, 2002, the applicant was requested to: (1) submit the final court dispositions for each and all of his prior arrests; and (2) appear for fingerprinting before February 18, 2002. The district director noted that in response to the request, the applicant submitted a Diversion Instruction Sheet, and an alcohol information school sheet. The district director also determined that neither of the documents submitted was a court certified judgment and commitment, and concluded that the applicant had abandoned his application. Therefore, the district director denied the application on May 2, 2002.

As noted by the district director, the record shows that the applicant did respond to the district director's request for evidence. Therefore, the district director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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. 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.

The Federal Bureau of Identification (FBI) fingerprint results report shows that the applicant was arrested on December 31, 1999, in Indianapolis, Indiana, for “RESIST LAW ENFORC/MA.”

On January 23, 2002, the applicant was requested to submit the final court dispositions of any and all arrests, including the arrest listed in the FBI report. He was advised that this document must include the original certification/seal of the court. In response, the applicant submitted a copy of a “Diversion Instruction Sheet” and a copy of an “Alcohol Information School” sheet. Because neither of these documents are certified court dispositions or judgments, the district director denied the application.

On appeal, the applicant asserts that he presented all of the evidence requested at the time that he appeared for fingerprinting.

The record of proceeding, however, does not contain the requested final court disposition of his arrest, obtained from the court where the case was heard. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant has failed to provide 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).

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.