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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



[WAC 00 258 50199]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JUN 29 2005

IN RE:

Applicant:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 had been convicted of either a felony or two or more misdemeanors.

On appeal, the applicant submits a statement and copies of court documents previously furnished and contained in the 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. 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.

The record reveals the following offenses:

- (1) On April 25, 1994, in Norwalk, California, the applicant was arrested and charged with Count 1, first degree residential burglary, in violation of Penal Code [REDACTED] a felony; and Count 2, possession of stolen property, PC 496(a), a felony. On May 20, 1994, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged a minor and declared a ward of the court.
- (2) On June 8, 1994, in Norwalk, California, the applicant was arrested and charged with Count 1, assault-great bodily injury with a deadly weapon, PC 245(a)(1), a felony; and Count 2, exhibiting a deadly weapon, PC 417(a), a misdemeanor. On October 18, 1994, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged a minor and declared a ward of the court.
- (3) Based on an arrest for possession of marijuana, 11357(b) H&S, on July 11, 1994, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged a minor and declared a ward of the court.
- (4) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on October 1, 1994, in Alhambra, California, the applicant was arrested for battery. The applicant was 17 years of age at the time of the arrest; however, the final court disposition of this arrest is not contained in the record.
- (5) The FBI report shows that on October 4, 1994, in Norwalk, California, the applicant was arrested for assault with a deadly weapon-not firearm. The applicant was 17 years of age at

the time of the arrest; however, the final court disposition of this arrest is not contained in the record.

- (6) On March 28, 1997, in the Municipal Court of Santa Anita Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 7, 1996), the applicant was convicted for unlicensed driver, 12500(a) VC, a misdemeanor. He was ordered to pay \$380 in fines and costs.
- (7) On May 20, 1998, in the Municipal Court of Santa Anita Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor; and Count 2, battery against former spouse/fiancé, 243(e)(1) PC, a misdemeanor. On June 29, 1998, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, ordered to spend 3 days in the county jail, and pay \$628 in fines and costs. Count 1 was dismissed.
- (8) On October 31, 2000, in the Municipal Court of Santa Anita Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 21, 2000), the applicant was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was ordered to pay \$415 in fines and cost.
- (9) The FBI report shows that on April 4, 2000, in Monrovia, California, the applicant was arrested for Count 1, battery of a spouse/ex-spouse/date/etc; and Count 2, corporal injury on a spouse/cohabitant. The final court disposition of this arrest is not contained in the record although the applicant was requested on May 31, 2002, to submit the final court disposition of all his arrests.

The record shows that the applicant was sixteen and seventeen years of age when he was arrested and tried in Juvenile Court for the offenses listed in Nos. 1, 2, and 3 above. The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency<sup>1</sup> are not crimes in the United States and that an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. The Board further held that since an act of juvenile delinquency is not a crime for the purposes of immigration laws, then such conduct can not serve as the basis of a finding of inadmissibility. Accordingly, the applicant's juvenile record cannot act as a bar to his eligibility for TPS. The record, however, shows that the applicant was convicted of at least three misdemeanor convictions (Nos. 6, 7, and 8 above).

On appeal, the applicant asserts that his conviction of battery against spouse/fiancé (No. 7 above) was "exonerated" on January 31, 2003, and his conviction of unlicensed driver (either No 6 or No. 8 above) was "exonerated" on November 26, 2001.

The applicant, however, failed to submit evidence to establish that he had been exonerated or that these charges had been dismissed. Additionally, the Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or

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<sup>1</sup> Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, the applicant remains convicted, for immigration purposes, of the misdemeanor convictions listed in No. 7 and Nos. 6 or 8 above.

The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, detailed in Nos. 6, 7, and 8 above, and because he failed to provide the final court disposition of his arrests detailed in Nos. 4, 5, and 9 above. Section 244(c)(2)(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 will be 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.