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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 99-155-51312]

OFFICE: LOS ANGELES

DATE: MAR 02 2005

IN RE: Applicant: [REDACTED]

[REDACTED]

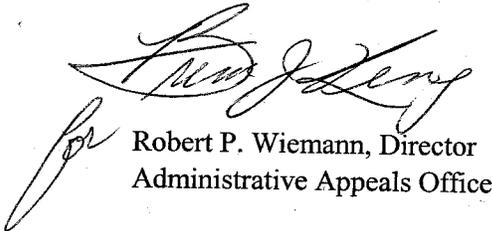
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles. 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 district director denied the application because she found that the applicant had been convicted of two or more misdemeanor offenses.

On appeal, counsel submits a statement and photocopies of documents previously submitted in response to a request for 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.

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.

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 reveals the following offenses:

- (1) On July 2, 1990, the applicant was arrested by police officers in Los Angeles, California, under the name [REDACTED] and charged with possession or purchase of a narcotic controlled substance for sale, a misdemeanor. The Federal Bureau of Investigations (FBI) Identification Record contained in the record of proceedings indicates that the applicant was convicted in the Superior Court of California, County of Los Angeles, of possession or purchase of cocaine base for sale in violation of section 11351.5 HS, a misdemeanor. (Docket Number [REDACTED]) The applicant's conviction on this charge is confirmed by two

court documents provided by the applicant in response to the district director's request for additional evidence. The record contains a court record of the applicant's sentencing hearing on August 7, 1990, after having been convicted of one count of possession or purchase of cocaine base for sale in violation of section 11351.5 HS, a felony. According to this document, the applicant was granted probation for a period of three years, and ordered to serve six months spent in the county jail, plus a fine of \$150. The record also contains a court document dated August 6, 1993, indicating that the applicant was found to be in violation of probation and ordered to serve 180 days in the county jail. Both of these documents reflect the same docket number [REDACTED]

- (2) On June 29, 1993, the applicant was arrested in Santa Monica, California, and charged with providing false identification to an officer in violation of section 148.9 PC, a misdemeanor, and also with using or being under the influence of a controlled substance in violation of section 11550 H&S, a misdemeanor. On August 10, 1993, the applicant was convicted in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, of providing false identification to an officer in violation of section 148.9 PC, a misdemeanor. Count 2 was dismissed. (Docket Number [REDACTED])

On appeal, counsel contends that the denial was premature, because the Notice of Intent to Deny dated March 31, 2004, granted the applicant 30 days to respond to the notice with additional evidence. Counsel states that the charges can be vacated.

The record contains a memorandum from the district director indicating that the notice of decision was issued on April 8, 2004, because the applicant provided the requested court disposition documents prior to the April 30, 2004, deadline. After the applicant provided court documents establishing that she has been convicted of two offenses, the district director properly denied the application.

As to counsel's statement that the charges can be vacated, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

The applicant is ineligible for TPS due to her record of at least one felony and one misdemeanor conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to her drug-related conviction detailed in No. 1 above. While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to her inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

It is noted that the applicant previously filed a Form I-589, Request for Asylum in the United States, on January 21, 1994. Her application was denied on April 14, 1997, and she was referred for a removal hearing before an Immigration Judge. On September 16, 1998, an Immigration Judge in Los Angeles, California, found the applicant removable from the United States and granted her voluntary departure on or before January 14, 1999, with an alternate order of deportation if she failed to depart as ordered. The applicant failed to depart as ordered. She filed the current application for TPS on March 25, 1999.

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.