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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 09 2005

[WAC 03 214 54782]

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.

Cindy N. Gomez for

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 case will be remanded to the director for further action.

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 a felony or two or more misdemeanors.

On appeal, the applicant asserts that he was informed by his public defender that his case was dismissed because he was under 18 years of age.

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).

The record shows that on August 13, 2000, the applicant was arrested and charged with a felony. On August 15, 2000, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant's case was adjudicated to have committed a delinquent act. Deferred entry of judgment was entered, he was placed on probation for a period of 12 months, and released to his father. The case was dismissed on August 30, 2001.

The record shows that the applicant was seventeen years of age when he was arrested and tried in Juvenile Court for the charges detailed above. The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency¹ 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. Furthermore, the record does not indicate that the applicant had any arrests and/or convictions as an adult. The applicant is not ineligible under the provisions of section 244(c)(2)(B)(i) of the Act and has, therefore, overcome the only basis for the director's denial.

However, the record, as presently constituted, is insufficient to establish the applicant's continuous physical presence in the United States since January 5, 1999. Nor did the director address in his decision the applicant's qualifying continuous residence in the United States since December 30, 1998, as described in 8 C.F.R. § 244.2(b) and (c).

The case will be remanded so that the director can render a full adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

¹ 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."

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion.