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U.S. Department of Homeland Security
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Washington, DC 20529



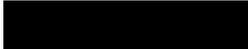
U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

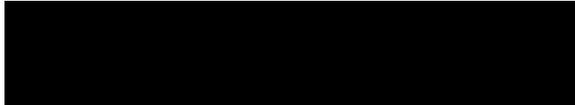
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IN RE:

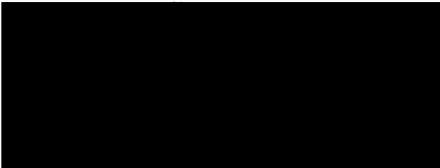
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Texas 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 failed to submit requested court documentation relating to his criminal record.

On appeal, counsel states:

The appeal serves to submit all required evidence with respect to my client's case for temporary protected status. Please be reminded that on April 26, 2002, was scheduled to appear before an officer representing the Immigration and Naturalization Service. He was, at the time, requested to provide additional evidence with regard to a 1993 arrest that appeared on his police clearance record, as well as proof of continuous residence within the United States. However, at the time of the aforementioned interview, my client only found himself with the referenced police clearance record and the required proof of continuous residence. As a result, and in response to the annexed 'Notice of Decision', please be informed that along with this 'Notice of appeal to the Administrative Appeals Unit (AAU)' – Form I-290B- your offices will be able to find the remaining evidence required for a positive conclusion of my client's case. please be informed that said evidence consists of the following documentation, and is as such submitted along with the appeal at hand: 1. police clearance record, 2. Complaint/arrest affidavit, 3. court disposition, and 4. proof of continuous residence within the United States.

Counsel submits documentation concerning the applicant's continuous residence and continuous physical presence in the United States along with the following documents concerning the applicant's arrest:

1. A copy of the applicant's "D6 clearance" dated January 23, 2001 from a Deputy Clerk of The County Court In and For Dade County, Florida. The clearance shows that he was issued a uniform traffic citation number on September 20, 1993 for a traffic infraction. His "fail to comply date" was November 22, 1993 based on a fail code of "01" and that on September 14, 2000 he satisfied his suspension.
2. A copy of the applicant's complaint/arrest affidavit (uniform traffic citation number dated September 20, 1993 from an officer of the Miami-Dade Police Department in Miami, Florida showing that he was arrested for DUI.
3. A copy of the applicant's jail booking record issued by the Metropolitan Dade County Correction and Rehabilitation Department showing he entered jail on September 20, 1998 based upon a driving under the influence arrest and that he was released the next day after posting a \$1,000 cash bond.

4. A copy a name search dated June 20, 2002 for the applicant made by the Miami-Dade Police Department Central Records Bureau in Miami, Florida showing case number [REDACTED]. The document contains a warning that it is "Not valid unless the seal of the Miami-Dade Police Department Central Records Bureau is affixed." The seal is not affixed.

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 parole; 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.

The applicant's Federal Bureau of Investigation fingerprint results report shows that he was arrested on August 20, 1993 by the Metro-Dade Police Department under Agency Case- [REDACTED] the traffic offense of DUI.

On April 26, 2002, the applicant was requested to appear before an officer of the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), and to submit the arrest report and final court disposition of his 1993 arrest. Although he appeared for his interview, the director denied his application on June 11, 2002, finding that he had failed to provide the requested documentation.

On appeal, counsel submits the applicant's D6 clearance, arrest report, jail booking record and an unofficial Miami-Dade Police Department Central Records Bureau name check. Counsel also asserts that the applicant's court disposition is being submitted as well. However, no court disposition was forwarded for the record.

The applicant has not complied with the Service's request for a certified copy of the final court disposition of his arrest on September 20, 1993. 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). Accordingly, the director's decision to deny the application will be affirmed.

The record of proceeding contains a copy of Form I-210, Voluntary Departure Notice, reflecting that on September 20, 2003 an immigration judge granted the applicant voluntary departure from the United States on or before October 20, 1993, with an alternate order of deportation if the applicant should fail to depart as required. There is no evidence in the record that the applicant departed from the United States as required.

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.