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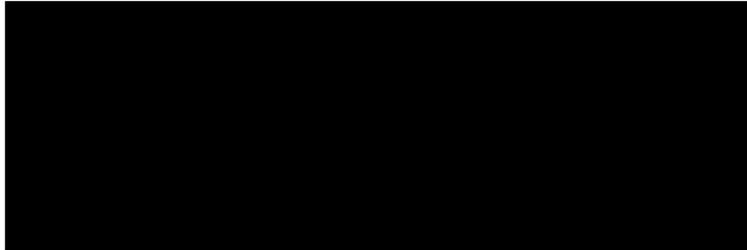
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[WAC 99 159 52288]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2006

IN RE:

Applicant:



APPLICATION:

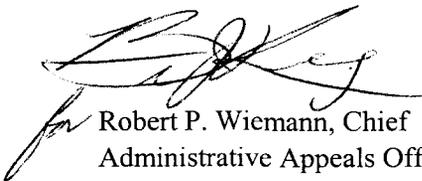
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 director denied the application after he found the applicant ineligible for TPS based on his felony conviction for possession of a controlled substance.

On appeal, the applicant, through counsel, claims he received a deferred entry of judgment; therefore, he has not been convicted of a felony.

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.

Additionally, the applicant must be admissible as an immigrant. Under 212(a)(2)(A)(i)(II) of the Act, “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.” (Emphasis added).

The record reveals the following offense:

- (1) On October 26, 2004, the applicant was convicted of possessing a narcotic controlled substance, in violation of California Health and Safety Code § 11350(A), a felony offense

On appeal, the applicant states he received a deferred adjudication of guilt. Even though the applicant is arguing that his charge will be dismissed once he completes the diversion program, he still had to enter a plea of guilty to receive the deferred adjudication of guilt.

Section 101(a)(48) of the Act states that when an adjudication of guilt has been withheld, it is still considered a conviction for immigration purposes.

- (A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, *if adjudication of guilt has been withheld*, where
- (i) a judge or jury has found the alien guilty or the alien has *entered a plea of guilty* or nolo contendere or has admitted sufficient facts to warrant a finding of guilty, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.
- (B) Any reference to a term of imprisonment or sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(Emphasis added).

Additionally, the applicant has been convicted of a drug offense. The applicant’s drug conviction renders the applicant inadmissible to the United States. Therefore, the applicant is ineligible for TPS due to his felony drug conviction, detailed above. 8 C.F.R. § 244.2(d). Consequently, the director's decision to deny the applicant’s TPS application will be affirmed.

It is noted that the applicant was ordered removed to Honduras by an Immigration Judge on October 8, 1997 and was deported to Honduras on October 15, 1997.

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.