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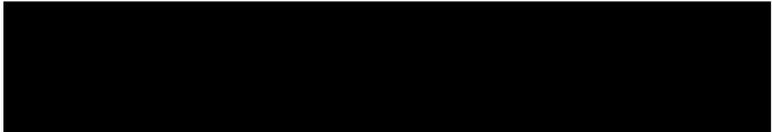
Office: TEXAS SERVICE CENTER

Date: OCT 03 2006

IN RE: Applicant: [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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC), and is now before the Administrative Appeals Office (AAO) 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 not submitted a court disposition for an arrest. The applicant filed an appeal that was considered as a motion to reopen by the director who again denied the application on July 2, 2004, because although the applicant had submitted the court disposition for his driving while intoxicated arrest, a misdemeanor, on September 17, 2001, he had not submitted the court disposition for his May 22, 2002 arrest for failure to appear, also a misdemeanor. The applicant filed an appeal to the director's determination that is now before the AAO.

On appeal, counsel states that the arrest warrant of May 22, 200, cited by the director, arose out of the same incident of September 17, 2001. Counsel argues that the arrest warrant was issued as a result of the applicant's failure to appear on the charge of September 17, 2001. Counsel forwards an additional Broward County, Florida County Court Disposition Order for the applicant dated May 24, 2002.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 record reflects the following offenses:

- (1) On May 22, 2002, the applicant pled nolo contendere to a charge of driving while his driver's license was suspended, a misdemeanor, in the County Court in and for Broward County, Florida. The presiding Judge entered an order withholding an adjudication of guilt and ordered the applicant be placed on six months probation.
- (2) On May 24, 2002, the applicant was found guilty of driving under the influence, a misdemeanor, by a presiding Judge in the County Court in and for Broward County, Florida.

- (3) The applicant's Federal Bureau of Investigation fingerprint results report shows that on May 22, 2002, he was arrested by the Broward County Sheriff's Office in Florida, for two misdemeanor counts of failure to appear.

Counsel argues that the applicant's failure to appear arrest(s) were resolved when his driving under the influence arrest was resolved. However, the disposition documentation for that arrest has not been provided by the applicant. Counsel submits no evidence to support this assertion. It is noted that he assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988).

Pursuant to section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101((a)(48)(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 guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record shows that the applicant pled guilty to the crime of driving while his license was suspended, listed at Item #1 above, and that the judge restrained his liberty by placing him on probation. It is determined that the applicant is ineligible for TPS due to his two misdemeanor convictions listed 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 is 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.