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

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[redacted]

FILE: [redacted] TEXAS SERVICE CENTER Date: SEP 28 2006
[SRC 99 198 52447]

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: 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.

for Robert P. Wiemann, Chief
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 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 director denied the application because the applicant's FBI background check indicated he was convicted for Trans/Sell Cont. Substance on December 15, 1993.

On appeal, the applicant states that when he was arrested he was a minor and that the court dismissed the case. He explains that he was sent for rehabilitation under the care of his sister in Miami, Florida. The applicant submits a letter dated June 13, 2000 from a deputy probation officer of the City and County of San Francisco Juvenile Probation Department to support his assertions.

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.
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> *Misdemeanor* means a crime committed in the United States, either
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> (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.
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> 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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) 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 (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 December 4, 1993, the applicant, under the name (date of birth October 31, 1974), was arrested and charged with sale/transportation/offer to sell a controlled substance (cocaine), in violation of Health & Safety Code (H&S) 11352(A), a felony. He pled guilty to the charge on December 15. 1993 and was convicted in adult court. On September 22, 1994, a Judge of Juvenile Court held a jurisdictional hearing and entered an order in which he deemed this conviction to be a juvenile conviction because of the age of the applicant, under the name of (date of birth October 31, 1977).

2. The Federal Bureau of Investigation fingerprint results report shows that on April 21, 1994, in San Francisco, California, the applicant, under the name of was arrested and charged with the possession of rock cocaine for sale.

3. The Federal Bureau of Investigation fingerprint results report shows that on July 15, 1994, in San Francisco, California, the applicant was arrested and charged with the possession of rock cocaine for sale and keeping a place to sell a controlled substance.

4. The Federal Bureau of Investigation fingerprint results report shows that on October 11, 2000, in West Palm Beach, Florida, the applicant under the name of was arrested for resisting an officer and obstruction without violence, a misdemeanor; a nonmoving traffic violation of driving while his license was suspended, a misdemeanor; and, possession and display of a cancelled or revoked driver's license, a misdemeanor.

5. The Federal Bureau of Investigation fingerprint results report shows that on September 30, 2001, in North Miami Beach, Florida, the applicant under the name was arrested for two counts of burglary of an unoccupied conveyance, a felony; and, possession of burglary tools, a felony.

6. The Federal Bureau of Investigation fingerprint results report shows that on September 9, 2004, in Dade County, Florida, the applicant under the name of was arrested for three counts of larceny, all felonies; a nonmoving traffic violation for knowingly using a suspended driver's license; and, for vehicle title fraud, a felony.

7. The Federal Bureau of Investigation fingerprint results report shows that on November 13, 2004, on Lee County, Florida, the applicant under the name of was arrested for driving under the influence of alcohol or drugs, a misdemeanor.

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." The Board of Immigration Appeals, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency 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 couldn't serve as the basis of a finding of inadmissibility.

However, the identity and nationality of an applicant is fundamental to the applicant's claim for TPS. According to the applicant's criminal record at Item #1, his name is and he was born on October 31, 1974 or his name is and he was born on October 31, 1977. The applicant's birth certificate, his TPS application, his application for employment authorization and other documents contained in the record show his name as and that he was born on October 31, 1977. The applicant has not submitted any evidence to resolve this conflicting claim. The applicant's conflicting claims as to his true identity and date of birth not only discredit the applicant's claim as to the critical elements of identity and nationality, but, in the absence of an explanation or rebuttal, also indicate an overall lack of credibility regarding the entire claim. *Cf. Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is also noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the applicant has not conclusively established his true identity and/or nationality. Consequently, the application is denied for this additional reason.

On April 2, 2004, the applicant was requested to furnish certified copies of court dispositions for all of his arrests. The applicant had failed to provide the final court disposition of his arrests detailed in Items #2, #3, #4, and #5 listed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Additionally, it is noted that the applicant had not been arrested for the crimes reflected in Items #6 and #7 listed above when the director sent the April 2, 2004 letter to him. The applicant also failed to forward the court dispositions for the arrests listed in Items #6 and #7, as listed above.

It is noted that, in removal proceedings held on July 19, 1991, an Immigration Judge in Los Angeles, California, ordered the applicant deported "in absentia" to Honduras.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.