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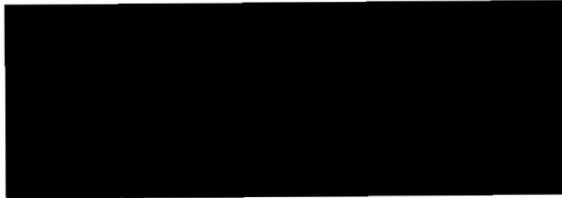
[EAC 99 102 50387]

OFFICE: VERMONT SERVICE CENTER

DATE: **SEP 27 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: 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because he had been convicted of a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that two incidents were related to altercations with his girlfriend, and that a third incident related to his arrest because police believed he was hiding a person for whom they were looking, and that those charges were dismissed. In support of the appeal, the applicant submits additional evidence relating to some of the charges against him.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) 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 Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following:

1. On July 1, 1991, the applicant, indicating that he was from El Salvador, was arrested by the United States Border Patrol, El Paso, Texas, and placed in removal proceedings;
2. On October 16, 1992, the applicant was arrested by the Parsippany Troy Hills Police Department [New Jersey], Agency Case No. [REDACTED] and was charged with "001 CNT [REDACTED] Obstructing Court Order, ...Disposition: Dismissed 001 [REDACTED] Deg: Contempt of Court;"
3. On February 9, 1993, the applicant was arrested by the Rockaway Township Police Department [New Jersey], Agency Case No: [REDACTED], and was charged with "001 [REDACTED] Shoplifting, ... Disposition: Guilty [REDACTED] Shoplifting, Aggregate Sentence Date: 4/1/93, Amount Assessed \$300;"
4. On March 10, 1993, the applicant was arrested by the Randolph Township Police Department [New Jersey] Agency Case [REDACTED] and was charged with "001 [REDACTED] Receive Stolen Property and [REDACTED] 1 Obstruct Admin of Law."

The applicant also submitted documentation from the New Jersey Automated Complaint System, Charge Disposition Inquiry, indicating: an offense under section [REDACTED] "Agg Arson Danger of Injury" with a disposition date of September 7, 1995, amended offense [REDACTED], "Criminal Mischief W/Damage," and a fine; an offense under section [REDACTED] "Simple Assault Disorderly," with a disposition date of December 3, 1996, to the amended offense: [REDACTED] "Breach of Peace [typed in different font over correction fluid], and a fine; and, a document from the Office of the Prosecutor, County of Morris, New Jersey, dated September 17, 1996, indicating that the original charge [REDACTED] (see Number 4 above), was administratively terminated.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he had "been convicted of a felony or two or more misdemeanors committed in the United States."

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment

based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI and other reports. Nor is there evidence in the record that the applicant was requested to submit the court documents of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision.

As always, the burden of proof in these proceedings 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 and entry of a new decision.