



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 01 2007**
[WAC 00 273 51493]

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:
[REDACTED]

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, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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: (1) had been convicted of two misdemeanors; and (2) had failed to establish that she was eligible for late registration.

On appeal, counsel asserts that the applicant was adjudicated a ward of the juvenile court, and that under section 602 of the California Welfare and Institutions Code, adjudications are not convictions. He further asserts that the applicant was a minor child of a TPS applicant on September 5, 2000, when she filed her application.

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 felony or misdemeanor.

The record reveals the following offenses:

- (1) On October 31, 2000, the applicant, under the name of [REDACTED] was arrested for petty theft, 484(a) PC, a misdemeanor. On April 4, 2001, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged a minor and declared a ward of the court. She was placed on probation, ordered to perform 100 hours of work under the supervision of the probation officer, and released to her parents.
- (2) On January 12, 2002, the applicant, under the name of [REDACTED] was arrested for petty theft, 484(a) PC, a misdemeanor. On April 16, 2002, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged a minor and declared a ward

of the court. She was placed on probation, ordered to perform 50 hours of work under the supervision of the probation officer, and released to her parents. On September 17, 2003, jurisdiction was terminated and the applicant was released.

The record shows that the applicant was fourteen years of age when she was arrested and tried in Juvenile Court on October 31, 2000 (No. 1 above), and she was sixteen when she was arrested and tried in Juvenile Court on January 12, 2002 (No. 2 above). The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency¹ 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 can not serve as the basis of a finding of inadmissibility.

Accordingly, the applicant's juvenile record cannot act as a bar to her eligibility for TPS. Furthermore, the record does not indicate that the applicant had any arrests and/or convictions as an adult. The applicant is not ineligible under the provisions of section 244(c)(2)(B)(i) of the Act. Therefore, this portion of the director's decision will be withdrawn.

The second issue in this proceeding is whether the applicant had established eligibility for late registration.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until July 5, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her TPS application on September 5, 2000.

To establish that the applicant qualified for late registration described in 8 C.F.R. § 244.2(f)(2) (listed above), she provided a copy of her mother's Employment Authorization Card (Category A12) as evidence that she is the child of an alien granted TPS. Therefore, the applicant has met the criteria for late registration as the child of an alien currently eligible for TPS, as described in 8 C.F.R. § 244.2(f)(2)(iv). Accordingly, the director's decision to deny the application for this reason will also be withdrawn.

However, the record, as presently constituted, is insufficient to establish the applicant's continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, and as described in 8 C.F.R. § 244.2(b) and (c). Nor did the director address in his decision the applicant's qualifying continuous residence and continuous physical presence in the United States.

Therefore, the case will be remanded so that the director could render a full adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

¹ 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."

As always in these proceedings, the burden of proof 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.