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

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FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: DEC 13 2007
[SRC 99 132 53503]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be a native and citizen of Nicaragua 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 she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant states that TPS is important so that he can work and help his family. The applicant also submits evidence regarding his criminal record.

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.
8 C.F.R. § 244.1.

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 record reveals the following offenses:

- (1) On October 2, 2004, the applicant was arrested by the Lee County, Florida Sheriff's Office for "Probation Violation" and "Driving While License Suspended, 2nd Offense."

Pursuant to a letter dated June 23, 2005, the applicant was requested to submit the final court disposition for the charge detailed above. In response, the applicant submitted documentation showing that he was found guilty of "Driving While License Suspended, 2nd Offense." The director determined that this conviction indicates that the applicant had previously been convicted of "Driving While License Suspended." However, no court documentation was provided for this offense.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on December 21, 2006.

On appeal, the applicant states that he sent the information about his most recent case but did not think about the previous case. The applicant also states that his TPS is important because he needs to work to take care of his family. According to the applicant, he does not want to risk his family under the Nicaraguan regime. The applicant also submits the following:

1. A letter from the Deputy Clerk, Clerk of Circuit Court Lee County, Florida.
2. Copies of County Court, Lee County, Florida Order/Commitment Form, and a Case Document for the "Driving While License Suspended", a court document in Spanish, and a Collier County Probation Department Probation Tracking System.

The letter from the Deputy Clerk indicates the applicant had been convicted of "Driving While License Suspended", a misdemeanor. The Probation Tracking System report indicates the applicant was convicted of "Reckless Driving First", a misdemeanor.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) fingerprint results report indicates that subsequent to the applicant's appeal, the applicant was arrested On May 2, 2007, by the Daytona Beach, Florida Police Department for "Shoplifting." The final disposition for this arrest is not in the record. CIS must address this arrest and any convictions in any future proceedings.

The applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

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.