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U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: SAN FRANCISCO

DATE: **MAY 18 2007**

erroneously consolidated herein]

[WAC 99 228 51145]

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.

*Cindy M. Gomez for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office 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 district director denied the application because the applicant had failed to respond to a request for evidence. The district director also denied the application because the applicant had been convicted of two felony offenses, and because the applicant had failed to establish that he is a national of Honduras.

On appeal, the applicant requests reconsideration because he had paid his fines and served his sentence, and that he has not committed any crimes since 1996. The applicant submits the court documents relating to his felony conviction of "accessory" and the Court Minute Orders relating to other offenses committed by the applicant.

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.

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 Federal Bureau of Investigation (FBI) fingerprint results report indicates the following:

- (1) On June 5, 1995, in San Francisco, California, under the alias of [REDACTED] the applicant was arrested and charged with Count 1, hit and run driving causing property damage, 20002(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, driving without a valid driver’s license, 12500(a) VC, a misdemeanor. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been discharged by the District Attorney’s Office on July 5, 1995, in the interest of justice.
- (2) On August 14, 1997, under the alias of [REDACTED], the applicant was received at the San Quentin State Prison, to begin his sentence for his conviction of “accessory,” 32 PC, a felony. This case appears to relate to No. 5 below.

In addition, the California Law Enforcement Teletype Service (CLETS) printout report indicates the following arrests and/or convictions in San Francisco, California, under the aliases of [REDACTED] or [REDACTED]

- (3) On May 10, 1995, the applicant was arrested for transporting/selling a narcotic controlled substance, 11352 H&S. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been discharged by the District Attorney's Office on May 10, 1995, for lack of evidence.
- (4) On March 10, 1996, the applicant was arrested and charged with Count 1, assault with a deadly weapon, 245(a) PC; and Count 2, "battery on a non-cohabitant former spouse/etc.," 243(e) PC. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been dismissed by the District Attorney's Office on September 20, 1996.
- (5) On March 21, 1996, the applicant was arrested for Count 1, transporting/selling a narcotic controlled substance, 11352 H&S; and Count 2, criminal conspiracy, 182 PC. The CLETS report shows that the applicant was subsequently convicted on October 2, 1996, of "accessory," in violation of 32 PC, a felony. On appeal, the applicant submits the Abstract of Judgment-Prison Commitment of the Superior Court of California, County of San Francisco, indicating that the applicant was convicted on August 13, 1996, of Accessory, 32 PC, and he was sentenced to serve 1 year, 4 months, in the San Quentin prison.
- (6) On May 8, 1996, the applicant was arrested and charged with Count 1, inflicting corporal injury to a spouse/cohabitant, 273.5(a) PC; and Count 2, battery, 242 PC. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been dismissed by the District Attorney's Office on September 20, 1996, for lack of evidence.
- (7) On August 18, 1996, the applicant was arrested for possession of a narcotic controlled substance, 11350(a) H&S, a felony. The CLETS report shows that the applicant was subsequently convicted of this offense on October 2, 1996. However, the applicant failed to submit the actual final court disposition of this conviction.
- (8) On November 5, 1996, the applicant was arrested for "loitering in a public place: illegal drug activity," 11532(a) H&S, a misdemeanor. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been discharged by the District Attorney's Office on November 6, 1996, in the interest of justice.
- (9) On June 30, 1997, the applicant was arrested for possession of a firearm by a felon, 12021(a)(1) PC; Count 2, carrying a concealed weapon in a vehicle, 12025(a)(1) PC; and Count 3, loitering in a public place: illegal drug activity, 11532(a) H&S. On appeal, the applicant submits a Minute Order from the Superior Court of California, County of San

Francisco, indicating that the charges against [REDACTED] under Court Number [REDACTED] had been discharged by the District Attorney's Office on June 30, 1997.

The applicant is ineligible for TPS due to his record of at least one felony conviction (No. 1 above), and because he failed to provide the final court disposition of his arrest, detailed in No. 7 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). In addition, a conviction of the offense of possession of a controlled substance (No. 7 above) would render the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act; however, the applicant failed to submit the final court disposition. Consequently, the district director's decision to deny the application will be affirmed.

**ERRONEOUS CONSOLIDATION OF TWO FILES—[REDACTED] and [REDACTED]**

The next issue in this proceeding is whether the applicant is a native or citizen of Honduras.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state.... Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The district director noted that on March 25, 1994, [REDACTED], was ordered removed to Nicaragua by an Immigration Judge; and that, therefore, Citizenship and Immigration Services (CIS) is unable to determine the applicant's country of nationality.

On appeal, the applicant asserts that his "true and correct name and nationality is: [REDACTED], citizen of Honduras." He resubmits a copy of his Honduran passport.

The record of proceeding contains documents previously furnished by the applicant to establish his identity and nationality:

- (1) A certified copy of a Honduran birth certificate, with English translation, indicating that [REDACTED] (the applicant) was born on April 30, 1971, to [REDACTED] and [REDACTED], both Honduran nationals.
- (2) A copy of a Republic of Honduras identity card issued to the applicant in Honduras on August 15, 1989, bearing a photograph of the applicant.

- (3) A copy of an Identity Certificate issued to the applicant on July 19, 1999, by the Consul General of Honduras in San Francisco, California, bearing a photograph and fingerprint of the applicant.
- (4) A copy of a Republic of Honduras passport issued to the applicant in San Francisco, California, on August 2, 1999.

Based on the documents listed above, it is concluded that the applicant has submitted acceptable evidence to establish that he is a citizen and national of Honduras.

The record of proceeding, including the FBI fingerprint results report, indicate that on October 31, 1993, [REDACTED] was apprehended by the U. S. Border Patrol near the San Ysidro, California, port of entry, and was placed in deportation (removal) proceedings, and file [REDACTED] was created. [REDACTED] stated that he was a Nicaraguan citizen, having been born in Corinto, Chinandega, Nicaragua, on April 30, 1972, to Nicaraguan parents, [REDACTED] and [REDACTED]. A warrant of deportation was issued at San Francisco, California, on March 23, 1994, based on the final order of removal by an immigration judge; the warrant remains outstanding.

It is noted that fingerprints and photographs of [REDACTED] (the applicant) file [REDACTED] do not match the fingerprints and photographs of [REDACTED], file [REDACTED] the Nicaraguan citizen and national apprehended in 1993. Therefore, it is concluded that the applicant was not the person who was placed in removal proceedings on March 23, 1994, and the files [REDACTED] and [REDACTED] were erroneously consolidated. These two identities should be separated and the files made independent again.

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.