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U.S. Citizenship  
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FILE: [REDACTED] OFFICE: California Service Center DATE: FEB 01 2008  
[WAC 05 10482619]

INRE: 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 California Service Center. Any further inquiry must be made to that office.

*John H. Vaughan*  
for  
Robert P. Wiemann, Chief  
Administrative Appeals Office .

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). The application is now before the Administrative Appeals Office (AAO) 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 director denied the application because the applicant failed to submit the requested court documentation relating to his criminal record.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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.

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

- (1) On April 8, 1995, the applicant was arrested by the Houston, Texas, Police Department and charged with "DWI;"
- (2) On September 7, 1997, the applicant was arrested by the Palm Springs, Florida, Police Department and charged with "DUI;"
- (3) On August 31, 2000, the applicant was arrested by the Palm Springs, Florida, County Sheriff's Office and charged with "Battery;"
- (4) On September 3, 2000, the applicant was arrested by the Lake Worth, Florida, Police Department and charged with "DUI Alcohol or Drugs First Conviction;" and;
- (5) On March 21, 2006, the applicant was arrested by the Palm Beach, Florida, Sheriff's Office and charged with "Battery."

On September 29, 2005, the applicant was requested to submit the final court disposition for the charges detailed above. When the applicant failed to respond with the requested evidence, the director denied the application on April 17, 2006.

On appeal, counsel states that the applicant never received the director's request for additional evidence because the post office changed the zip code. Counsel also provided a change of address notification along

with the appeal. Counsel, however, did not provide any additional documentation relating to the applicant's past arrests.

A review of the record reflects that the applicant has not provided the court dispositions for his arrests as detailed in Nos. 1 and 3 above. The record does contain the final court dispositions for his arrests as detailed in Nos. 2, 4 and 5.

The record of proceedings contains copies of court dispositions from the Palm Beach County Court reflecting that the applicant was convicted of DUI [Florida State Statute 316.193(1)], "Driving Under the Influence," on September 26, 1997, and again on September 8, 2000, as detailed in Nos. 2 and 4 above. A violation of Florida State Statute 316.193(1), "Driving Under the Influence" is a misdemeanor offense, punishable up to six months in jail for the first conviction, and up to nine months for the second conviction. Court records indicate that the applicant's charge of "Battery," as detailed in No. 5 above, was *nolle prosequi*.

A review of the court dispositions reflects that the applicant he has been convicted of two misdemeanors committed in the United States. The applicant is not eligible for temporary protected status because he has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Furthermore, the applicant has not provided the final court dispositions regarding two of his arrests – DWI in Texas and battery in Florida - which could have resulted in additional convictions. Therefore, the director's decision to deny the application for TPS is affirmed.

It is also noted that the applicant filed an initial application for TPS [SRC 99 125 53707] on February 2, 1999. The record of proceedings does not contain a final decision on that application.

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.