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**U.S. Department of Homeland Security**
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

M1

[redacted]

MAY 1 2 2010

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[EAC 07 270 72806]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 appeal will be dismissed.

The applicant is a 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 had been convicted of two or more misdemeanors in the United States.

On appeal, the applicant states that he has only one misdemeanor conviction as he was not convicted of driving without a license as cited by the director in his decision.

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 Secretary 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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).

"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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed an initial TPS application (LIN9910352992) on January 22, 1999. The application, however, was rejected on March 2, 1999, because either an incorrect or no fee was submitted.

The applicant filed an initial TPS application (LIN0322550630) on July 7, 2003. The Director, Nebraska Service Center, denied that application on December 3, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration, he failed to establish the continuous residence and continuous physical presence requirements, and he failed to establish his nationality and identity. No appeal was filed from the denial of this application.

The applicant filed the current Form I-821 on June 22, 2007, and indicated that this was his first application to register for TPS. The applicant provided a copy of his Honduran passport with this application thereby, establishing his nationality and identity.

The FBI report dated September 27, 2007, revealed the following offenses in the state of Colorado:

1. On August 13, 1999, the applicant was arrested by the Aurora Police Department for making a false statement/report.

2. On November 5, 1999, the applicant was arrested by the Sheriff's Office in Arapahoe County for no proof of insurance and failure to appear.
3. On February 5, 2000, the applicant was arrested under the name by the Denver Police Department for failure to appear.
4. On February 15, 2002, the applicant was arrested under the name by the Denver Police Department for obstruct police and false information.
5. On February 4, 2003, the applicant was arrested under the name by the Denver Police Department for two counts of fugitive other jurisdiction (Arapahoe and Douglas Counties), no proof of insurance, and license plate required.
6. On February 24, 2003, the applicant was arrested by the Sheriff's Office in Arapahoe County and charged with probation violation and contempt of court.
7. On April 20, 2003, the applicant was arrested by the Aurora Police Department for three non-moving traffic violations that occurred in Arapahoe County and for fugitive other jurisdiction (speeding 20-24 over ARAP).
8. On April 21, 2003, the applicant was arrested by the Sheriff's Office in Arapahoe County and charged with failure to appear.
9. On January 29, 2005, the applicant was arrested by the State Police in Adams County for failure to produce driver license, possess fictitious driver license, drove without a Colorado driver license, and making false report.
10. On July 6, 2007, the applicant was arrested by the Sheriff's Office in Arapahoe County for a traffic offense-NVOL. The applicant was sentenced to serve 60 days for violating this offense.

On September 24, 2007, the director issued a Notice of Intent to Deny, which advised the applicant to submit certified final court dispositions for each of the arrests indicated above. The applicant, in response, submitted the following:

- For number three above, court documentation reflecting that on February 6, 2000, the applicant was charged with failure to appear (traffic). The applicant was convicted of this offense and ordered to pay a fine.
- For number four above, court documentation reflecting that the applicant pled guilty to false information, a violation of CRS 38-40.
- For number five above, court documentation from County Court of Denver County, which reflects that on February 5, 2003, the applicant was charged with failure to display proof of insurance, a violation of CRS 42-4-1409(3), a Class 1 misdemeanor traffic offense,[1] driving without a driver's license, a violation of CRS 42-2-101(1), a Class 2 misdemeanor traffic offense,[2] license plates violations, a violation of CRS 54-62, and false information a violation of CRS 38-40. The

[1] The minimum penalty for violating CRS 42-4-1409(3), is ten days imprisonment and a fine. See. CRS 42-4-1701(3)(a)(II)(A).

[2] The minimum penalty for violating CRS 42-2-101(1), is ten days imprisonment and a fine. See. CRS 42-4-1701(3)(a)(II)(A).

applicant pled guilty to all the offenses. The applicant was sentenced to serve five days in jail.

- Court documentation from the County Court of Douglas County, which reflects that on August 13, 1999, the applicant was charged with failure to present proof of insurance, a violation of CRS 42-4-1409(3), a Class 1 misdemeanor traffic offense. On October 26, 1999, the applicant pled guilty to this offense and was ordered to pay a fine and was placed on probation for 12 months. The court documentation indicates that this offense occurred on August 5, 1999. This case relates in part to number five above (fugitive other jurisdiction).
- Court documentation from the County Court of Arapahoe Country-Aurora, which reflects that on November 5, 1999, the applicant pled guilty to driving without a valid license, a violation of CRS 42-2-101(1), a misdemeanor, and failure to present proof of insurance, a violation of CRS 42-4-1409(3), a Class 1 misdemeanor traffic offense. On November 8, 1999, the applicant was sentenced to serve 30 days in jail and ordered to pay a fine for violating CRS 42-2-101(1). On November 8, 2009, the applicant was ordered to pay a fine and was placed on probation for three months for violating CRS 42-4-1409(3). The court documentation indicates that these offenses occurred on August 9, 1999. The applicant subsequently violated his probation and on February 24, 2003, the applicant was sentenced to serve five days in jail and ordered to pay a fine for CRS 42-4-1409(3). This matter relates to number six above.
- For number seven above, court documentation from the County Court of Arapahoe Country-Aurora reflecting that all the charges were dismissed on June 4, 2003.
- For number eight above, a police report indicating that the applicant bonded out on April 21, 2003, in
- Court documentation from the County Court of Arapahoe County-Littleton, which reflects that on May 23, 2003, a charge of fugitive other jurisdiction was dismissed. The applicant pled guilty to failure to display proof of insurance, a violation of CRS 42-4-1409(3), a Class 1 misdemeanor traffic offense, and to a lesser charge of driving without a driver's license, a violation of CRS 42-2-101(1), a Class 2 misdemeanor traffic offense. The applicant was ordered to pay a fine for each offense. The court documentation indicates that these offenses occurred on November 15, 2002. This matter relates in part to number seven above (fugitive other jurisdiction).
- For number nine above, court documentation from the County Court of Adams County, which reflects that on March 22, 2005, the applicant pled guilty to unlawful possession or use of license, a violation of CRS 42-2-136(2), a Class 2 misdemeanor traffic offense.[3] The applicant was ordered to pay a fine. The remaining offenses were dismissed.

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[3] The minimum penalty for violating CRS 42-2-136(2), is ten days imprisonment and a fine. See. CRS 42-4-1701(3)(a)(II)(A).

On appeal, the applicant claims that he has only one misdemeanor conviction as he was not convicted for driving without a license as cited by the director. The applicant's assertion, however, is not supported by the court documents he has presented.

The applicant has been convicted of at least two misdemeanors and, therefore, is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The FBI report also reveals that on July 2, 1999, the applicant was arrested by the Sheriff's Office in Colby, Kansas for theft. Although the applicant was requested to submit the final dispositions of *every* charge against him, he failed to provide the final outcome of this arrest. The applicant is, therefore, ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

Service records also reflect that on June 9, 2009, the applicant was arrested by the Commerce City Police Department of Colorado for driving under restraint/suspension, a violation of CRS 42-2-138(1)(a), a misdemeanor.

In issuing his Notice of Intent to Deny on September 24, 2007, the director also requested that the applicant submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, submitted photocopies of his mother's employment authorization issued under categories C19 (from June 15, 1999 to July 5, 2000) and A12 (since July 6, 2000), Form I-765, Application for Employment Authorization, and Forms I-821.

The applicant had met the threshold requirement for late registration during the initial registration period as he was a child (19 and 20 years of age)[4] of an alien currently eligible to be a TPS registrant. However, the applicant turned 21 years old on March 2, 2000, and pursuant to 8 C.F.R. § 244.2(g), the applicant did not file his own TPS application for late registration within a 60-day period immediately following the expiration of conditions described in 8 C.F.R. § 244.2(f)(2). Because the applicant can no longer be considered a child, he is ineligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv). The applicant has not established that he met any of the other criteria for late registration.

The director also requested in his Notice of Intent to Deny of September 24, 2007, that the applicant submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documents relating to his

[4] Section 101(b)(1) of the Act defines a child as an unmarried person under twenty-one years of age.

residence and physical presence in the United States. However, the documents submitted in response are not sufficient to establish continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999.

Service records reflect that at the time the applicant's mother filed her initial TPS application on January 22, 1999, she indicated at Part 3 that the applicant was residing in Siguatepeque, Honduras. Therefore, the affidavits from the affiants attesting to the applicant's residence since December 30, 1998 and physical presence since January 5, 1999 in the United States have no probative value or evidentiary weight. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I& N Dec. 582, 591-92 (BIA 1988). The applicant is ineligible for TPS as he has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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.