



U.S. Department of Justice

Immigration and Naturalization Service



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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE:



Date:

MAY 12 2000

IN RE:



APPLICATION:



IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

May 12 2000 - 015214

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who indicates on his application that he was admitted to the United States as a nonimmigrant visitor in January 1985 and remained longer than authorized. The applicant indicates that he was present in the United States without a lawful admission or paroled in July 1993.

The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant is inadmissible under § 244(c)(2)(B)(i) of the Act, 8 U.S.C. 244a(c)(2)(B)(i), for having been convicted of two or more misdemeanors in the United States.

On appeal, the applicant states that, even though his record contains evidence of his committing more than two misdemeanors, he has been rehabilitated. The applicant states that he has a five-year old son born in the United States and helps raise his wife's three young children after they were abandoned by their father. The applicant indicates that he has been cooperative and has completed alcohol prevention and anger management programs.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence. The applicant has satisfied the continuous physical presence requirement.

The record reflects that following:

(1) On February 2, 1992, the applicant was convicted of Battery on Spouse (a misdemeanor) and was sentenced to 6 months probation and domestic intervention.

(2) On June 10, 1992, the applicant was convicted of Battery (a misdemeanor) and was sentenced to 6 months probation and domestic intervention.

(3) On March 13, 1997, the applicant was convicted of simple assault (a misdemeanor) and was sentenced to 10 days (suspended).

(4) On June 9, 1997, the applicant was convicted of simple assault (a misdemeanor) and was sentenced to 10 days (suspended).

Section 244(c) (2) (A) of the Act, 8 U.S.C. 1254a(c) (2) (A), WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.-In the determination of an alien's admissibility for purposes of subparagraph (A) (iii) of paragraph (1) -

(i) the provisions of paragraphs (5) and (7) (A) of § 212(a) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of § 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when it otherwise is in the public interest; but

(iii) the Attorney General may not waive --

(I) paragraphs (2) (A) and (2) (B) (relating to criminals) of such section,

(II) paragraph (2) (C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3) (A), (3) (B), (3) (C), and (3) (E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) ALIENS INELIGIBLE.-An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

The record reflects that the applicant has been convicted of two or more misdemeanors committed in the United States. Therefore, he is ineligible for TPS.



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 § 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.