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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted] to
[redacted] warranted
invasion of personal privacy

FILE: [redacted] Office: Vermont Service Center Date: JAN 18 2002
EAC 99 197 51336

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

PUBLIC COPY

IN BEHALF OF APPLICANT: Self-represented

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

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further action.

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. 1254a.

The director determined that the applicant is ineligible for TPS because he has been convicted of a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he did submit additional evidence as had been requested to establish that he has been residing in the United States since 1989.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects the following:

1. On January 9, 1991, in Mineola, New York, the applicant was arrested and charged with driving while intoxicated.

2. On February 16, 1993, in Mineola, New York, the applicant was arrested and charged with driving while intoxicated.

3. On May 5, 1994, in Mineola, New York, the applicant was arrested and charged with (1) driving a motor vehicle while intoxicated, and (2) aggravated unlicensed operator. The FBI report shows that the applicant was convicted of both charges.

4. On July 31, 1995, the applicant was arrested or received at the Correction Facility East Meadow, New York, for the felony offense of driving while intoxicated. It is not clear if this case is related to paragraph 3 above.

The director determined that the applicant was convicted of a felony or two or more misdemeanors. The record, however, is devoid of the court's charging documents and final dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrests reports and the court's final dispositions of all his arrests. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.