

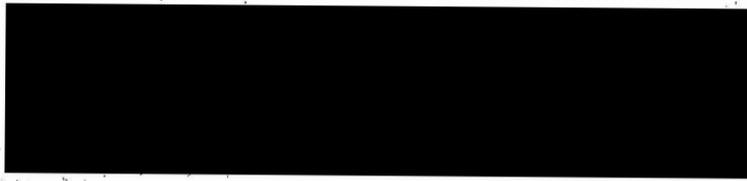
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 14 2006**
[WAC 05 085 84804]

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 record reveals that the applicant filed a TPS application during the initial registration period on June 20, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 205 52507. On June 26, 2000, the applicant was granted Temporary Protected Status. The Director, Texas Service Center, subsequently withdrew the applicant's TPS on December 31, 2003, when it was determined that the applicant had a criminal arrest, and the applicant had failed to respond to a request to submit the final court disposition of that arrest and of all other arrests. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1). The applicant did not file Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 24, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant requests that his case be reopened and that he be given the opportunity to be legal. He asserts that he has been residing in the United States since 1996, and he has never been in any kind of trouble.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

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 § 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.
- (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.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 24, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record indicates that on April 12, 2001, in the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. F01-9641 (arrest date March 25, 2001), the applicant was indicted for

Count 1, burglary of an occupied dwelling, Florida Statute (FS) 810.02(3)(a), a felony; Count 2, resisting an officer without violence, FS 843.02, a misdemeanor; and Count 3, criminal mischief, FS 806.13(1)(b), a misdemeanor. On April 20, 2001, the applicant was convicted of Counts 1, 2, and 3. He was placed on probation for a period of 2 years, ordered to complete 100 hours of community service, pay \$1500 in restitution and \$471 in court costs, as to Count 1; he was sentenced to 2 days in jail as to Counts 2 and 3.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

Burglary (with intent to commit theft) is a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721 (BIA 1982); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report shows the applicant did unlawfully enter or remain in a dwelling without the consent of the owner or custodian, having intent to commit theft. Likewise, criminal mischief, as defined in Florida Statute 806.13 ("..willfully and maliciously injures or damages by any means any real or personal property belonging to another.."), is a crime involving moral turpitude. See *Matter of M-*, 3 I&N Dec. 272 (BIA 1948) (Malicious Destruction of Property).

The applicant was convicted of one felony and two misdemeanors, detailed above, and his convictions continue to preclude a favorable finding of eligibility for TPS. Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due on his convictions of burglary and criminal mischief, found to be crimes involving moral turpitude. Therefore, the application also must be denied for this reason.

It is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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 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.