

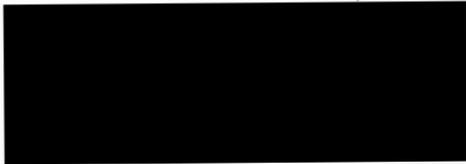
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**U.S. Citizenship  
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Services**

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FILE:



OFFICE: TEXAS SERVICE CENTER

DATE: **DEC 06 2006**

[SRC 99 129 52418]

IN RE:

Applicant:



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.

*Cindy N. Gomez for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 director denied the application after determining that the applicant had not overcome the basis for the original denial of his TPS application.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on February 17, 1999. The director noted that the Federal Bureau of Investigation fingerprint results report shows records of arrests relating to the applicant. Therefore, the applicant was requested, in a notice of intent to deny dated August 2, 1999, to submit the arrest report and certified final court dispositions of all arrests. The applicant was also requested to submit evidence of his nationality and identity. The director concluded that the applicant had abandoned his application and issued a Notice of Decision on February 14, 2000. The director advised the applicant that, while the decision could not be appealed, the applicant could submit a subsequent TPS application.

On November 18, 2002, the applicant filed a motion to reopen and reconsider his case. The applicant stated that he did submit all of the evidence requested by the director.

On December 6, 2002, the director granted the motion to reopen after determining that the applicant did furnish the requested evidence, and that the application had not been abandoned. The applicant was advised that his application would be reopened and remain pending until an updated result on his fingerprints was received.

On September 17, 2003, the director denied the motion to reopen after determining that the applicant had not overcome the basis for the original denial of his TPS application because the record only contained arrest report information, and no court dispositions had been furnished.

On October 3, 2003, the applicant appeals the director's decision to deny the motion. The applicant requests reconsideration and submits additional documentation, including court dispositions of his arrests.

Based on the director's finding that the applicant had not abandoned his application, a decision will be made based on the evidence of record.

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.

The record reveals the following offenses:

- (1) On July 18, 1995, in the County Court in and for Dade County, Florida, Case No. [REDACTED] (arrest date June 23, 1995), the applicant was convicted of driving under the influence, Florida Statute 316.193, a misdemeanor. He was placed on probation for a period of 6 months, ordered to spend 11 days in jail, pay \$583.75 in fines and costs, complete 50 hours of community service, and his driver's license was suspended/revoked for 6 months.
- (2) On January 3, 1996, in the County Court in and for Dade County, Florida, Case No. [REDACTED] (arrest date January 2, 1996), the applicant was convicted of driving under the influence, Florida Statute 316.193, a misdemeanor. He was placed on probation for a period of 6 months, ordered to pay \$583.75 in fines and costs, complete 50 hours of community service, and his driver's license was suspended/revoked for 6 months.

On appeal, the applicant requests reconsideration because he has submitted all of the evidence and documents requested, and he is willing to demonstrate that he has been living in this country. He states that he did have legal problems, but he has cleared these convictions.

The applicant, however, is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above. 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 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.