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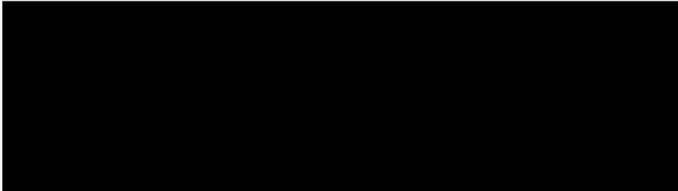
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FILE: [REDACTED] Office: California Service Center Date: DEC 15 2006
[WAC 05 085 77857]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER:



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 M. Gomez

Robert P. Wiemann, Chief
Administrative Appeals Office *foi*

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 is stated to be 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 record reveals that the applicant filed an initial TPS application on June 18, 1999 under U.S. Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) receipt number SRC 99 194 51858. The San Antonio, Texas, District Director denied that application on January 26, 2004, because the applicant failed to respond to a request to submit evidence requested to establish his eligibility for TPS. The director noted that on October 14, 2003, a notice to provide additional evidence was issued to applicant giving the applicant 12 weeks to submit the requested evidence. Specifically, the applicant was requested to provide all final certified court dispositions for his DWI arrests. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen within the requisite period.

It is noted that the same application was also denied on September 3, 2003 based on a failure to provide final dispositions in response to a request issued to the applicant on May 22, 2003.

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, on July 23, 2004, 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, counsel states that the applicant did not receive notice that the prior application was denied, and asserts that he bases the appeal on fairness and procedure, in an attempt to establish the applicant's eligibility for TPS. The applicant did not submit the additional requested evidence with the appeal.

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.

Furthermore, an alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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 August 25, 1999, the applicant was arrested by the Department of Public Safety, San Antonio, Texas, and charged with Driving While Intoxicated. On/or about February 9, 2000, the Hondo County (TX) Attorney's Office convicted the applicant of a misdemeanor, Driving While Intoxicated 1st Degree, for which he received 240 days probation, \$500 fine and \$224 in court costs;
- (2) On February 16, 2002, the applicant was arrested by the Police Department, San Antonio, TX, and charged with Driving While Intoxicated. On/or about January 29, 2003, the County Criminal Court at Law, Number 5, at San Antonio, Texas, convicted the applicant of a misdemeanor for Driving While Intoxicated 2nd Degree, for which he received 18 months confinement, 18 months probation, \$700 fine and \$284 court costs; and,
- (3) On August 9, 2004, the applicant was arrested by the Police Department, San Antonio, TX, and charged with Driving While Intoxicated. On/or about December 15, 2004, he pleaded "No Contest", to Driving While Intoxicated, 2nd Degree, and was discharged from probation for the conviction on January 29, 2003.

On appeal, the applicant's attorney does not present any argument pertaining to these arrests and convictions.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.