



U.S. Citizenship
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Services

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FILE: [REDACTED]
[WAC 05 055 78959]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 2006

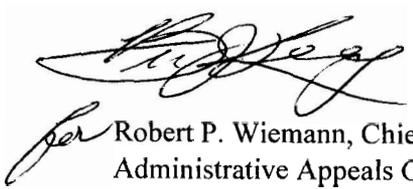
IN RE: Applicant: [REDACTED]

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.


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is claims 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 a TPS application during the initial registration period on May 10, 1999 under CIS receipt number SRC 99 170 51571. The District Director, Miami, Florida determined that the applicant had been convicted of a felony. The director, therefore, denied the application. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 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 states that he entered the United States on December 30, 1989 and has continuously lived in the United States since then. According to the applicant, he completed the designated program for his offense. The applicant also submits evidence in an attempt to establish his eligibility for TPS.

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 applicant may apply for TPS during the initial registration period, or:

- (f) (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 to August 20, 1999. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on November 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).

On appeal, the applicant states that he entered the United States on December 30, 1989 and has continuously resided in the United States since that date. The applicant also states that he is providing, the "Copy of the Recorded Order withholding adjudication and special conditions for a mistake that I committed in 1992, all of the charges that were writing by the Police Officer were not true but at the time I was in jail I had no relatives or friend to help me or give me any advice, unfortunately I signed the guilty option and I went to the special program which I completed and I received the Diploma with the satisfaction of the completion."

The applicant appears to argue that his completion of the Community Control program means that his conviction was removed. However, as defined in section 101 (48)(A) of the Act, the term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. Consequently, the applicant's plea of guilty indicates he was convicted of the crime.

The applicant, therefore, 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). Therefore, the application also must be denied for this reason.

Beyond the director's decision, it is noted that a Federal Bureau of Investigations Fingerprint Report reveals the following additional offenses:

- (1) On August 1, 2000, the applicant was arrested by the Miami Police Department and charged with "Property Malicious Destruction Municipal Ordin".
- (2) On August 10, 2004, the applicant was arrested by the Metro-Dade Police Department and charged with "Police Officer Firefighter Failure to Obey".
- (3) On January 31, 2006, applicant was arrested on August 1, 2000 by the Florida Highway Patrol-Miami and charged with "Driving under the Influence".

The final court dispositions for these arrests are not contained in the record. These charges must be addressed by CIS in any future proceedings.

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.