

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MI

MAR 22 2006

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 102 75556]

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.

Robert P. Wiemann, Director
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 is 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 121 53496. The director denied that application on March 13, 2001, because she found that the applicant had failed to submit requested court documentation relating to his criminal record. The applicant did not file an appeal or a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 10, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on March 15, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (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.
- (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 TPS application with CIS on January 10, 2005.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that the applicant further indicated on the current TPS application that he had misdemeanor convictions in 1990 and 1999, but both convictions were subsequently expunged. The applicant submitted the final court dispositions of the following offenses:

1. On October 25, 1990, the applicant was convicted in the Municipal Court of Van Nuys Judicial District, County of Los Angeles, State of California, of petty theft with a prior jail term in violation of section 666 PC, a misdemeanor. The court suspended imposition of a sentence in this case and placed the applicant on summary probation for a period of 24 months provided that he serve 30 days in the Los Angeles County Jail less credit for three days served. On January 14, 2002, the court vacated the applicant's conviction and dismissed the complaint pursuant to section 1203.4/1203.4(a) PC. (Date of Arrest: October 23, 1990; Case No. 90P11547).

2. On June 7, 1999, the applicant was convicted in the Municipal Court of Van Nuys Judicial District, County of Los Angeles, State of California, of one count of petty theft with a prior conviction in violation of section 666-484(a) PC, a misdemeanor. The applicant was placed on summary probation for a period of 24 months with the condition that he serve 30 days in the Los Angeles County Jail less credit for three days served and ordered to pay a restitution fine in the amount of \$100.00. On August 22, 2002, the court vacated the applicant's plea and dismissed the complaint pursuant to section 1203.4 PC. (Date of Arrest: June 3, 1999; Case Number 9PN03262).

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.

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.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). The crime of petty theft (Nos. 1 and 2 above) involves moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his two misdemeanor convictions detailed above.

The applicant is also 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). On appeal, the applicant asserts that these convictions do not render him ineligible for TPS because both convictions have subsequently been expunged. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). In this case, the court vacated the applicant's convictions because he had complied with all the terms of his periods of summary probation. The court did not make any finding on the merit of the applicant's conviction on the charges detailed above. Therefore, he remains ineligible for TPS because of his record of at least two misdemeanor convictions, and the application also must be denied for these reasons.

It is noted that the applicant was apprehended by the United States Border Patrol on January 2, 1988, near San Ysidro, California, after having entered the United States without inspection. The applicant was placed in removal proceedings and released on his own recognizance. On March 2, 1989, an Immigration Judge in Los Angeles, California, administratively closed the removal proceeding when the applicant failed to appear for his removal hearing.

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.