

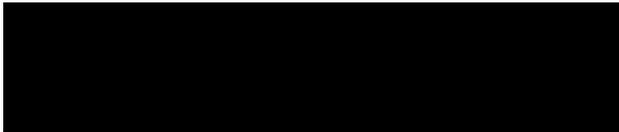


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

M1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2006

[WAC 05 106 80462]

[WAC 99 214 50649]

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, 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 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 99 214 50649. The application was approved on April 7, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 14, 2005, 2005, and indicated that he was re-registering for TPS. The applicant's fingerprint results report revealed that the applicant was arrested in Norwalk, California, on July 15, 2000, and charged with battery in violation of section 242 PC, a misdemeanor, and theft in violation of section 484(a) PC, a misdemeanor. On March 7, 2005, the applicant was requested to provide the final court dispositions of the charges detailed above. The applicant, in response, provided court disposition documents relating to the arrest detailed above and a separate arrest not reflected in the applicant's fingerprint results report. According to the court documents, the applicant was convicted in the Municipal Court of Long Beach Courthouse Judicial District, County of Los Angeles, State of California, on December 24, 1991, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor, and one count of driving with a suspended license in violation of section 14601.1(a) VC, a misdemeanor. (Date of Arrest: December 22, 1991; Case No. 91L13714). Additionally, the applicant was convicted on August 28, 2000, in the Superior Court of California, County of Los Angeles, of theft of property in violation of section 484(a) PC, a misdemeanor. (Date of Arrest: July 15, 2000; Case No. 0LC02231).

The director denied the application on May 11, 2005, because he found the applicant had been convicted of two or more misdemeanors.

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

Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

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 applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, detailed 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 for this reason will be affirmed.

CIS may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. If the decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 244.10(d). 8 C.F.R. § 244.14.

In this case, since it has been determined that the applicant is ineligible for TPS due to his record of three misdemeanor convictions, it is further concluded that the applicant has become ineligible for TPS after having been granted that status. Therefore, in accordance with 8 C.F.R. § 244.14, the prior approval of the applicant's TPS status is hereby withdrawn.

The application will be denied, and the applicant's temporary protected status will be withdrawn, 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, and the applicant's Temporary Protected Status is withdrawn.