



U.S. Citizenship
and Immigration
Services

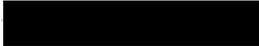
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 03 2006**

[WAC 05 076 71733]

[WAC 99 122 51694]

IN RE:

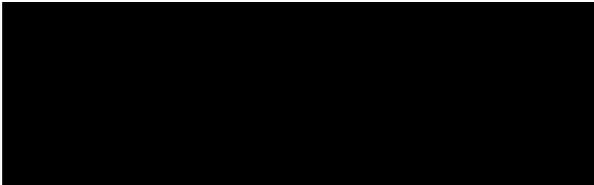
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 99 122 51694. The director approved the application on December 12, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 15, 2004, and indicated that he had previously been granted TPS and was applying for annual re-registration.

The director denied the application on July 29, 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

- (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. The applicant was arrested in Hawthorne, California, on June 7, 1996, on the charge of committing lewd or lascivious acts with a child under 14 years of age in violation of section 288a(b)(i) PC, a felony. The record indicates that the applicant was detained and released, and no charges were pressed in this matter.
2. The applicant was convicted on May 24, 1999, in the Municipal Court of Inglewood Courthouse Judicial District, County of Los Angeles, State of California, on one count of inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor. (Date of Arrest: May 20, 1999; [REDACTED])

3. The applicant was convicted on June 5, 2000, in the Superior Court of California, County of Los Angeles, on one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Date of Arrest: May 9, 2000; Case no. [REDACTED])

On appeal, counsel for the applicant asserts that the applicant has only been convicted of one misdemeanor, in connection with his conviction detailed in No. 2 above.

Counsel's assertion is incorrect. The applicant has been convicted of two misdemeanors. In addition to the conviction detailed in No. 2 above, to which counsel concedes, the applicant was also convicted on June 5, 2000, on the charge of driving without a valid driver's license, a misdemeanor (No. 3 above). Therefore, counsel's assertion cannot be accepted.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in Nos. 2 and 3 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 re-registration application for this reason will be affirmed.

Furthermore, the director 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. 8 C.F.R. § 244.14(a)(1).

In this case, since the record confirms that the applicant has been convicted of two misdemeanors, it is concluded that the applicant was not, in fact, eligible for TPS at the time he was granted such status on December 12, 2000. 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 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 TPS is hereby withdrawn.