

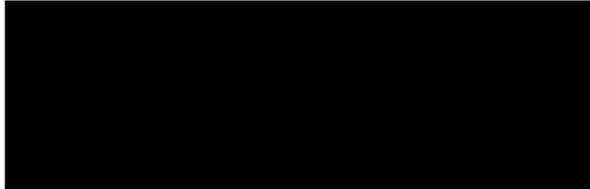
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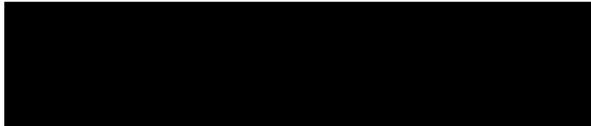
OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 18 2006

[WAC 06 014 70088]

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.

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 on appeal. The appeal will be dismissed.

The applicant is a native and 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 March 31, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 136 50746. CIS records indicate that the application was denied on January 17, 2002. On February 13, 2003, counsel filed a motion to reopen the denial decision. In the interim, the applicant filed a second TPS application on June 30, 2003, under CIS receipt number WAC 03 206 52862, and indicated that it was his "late initial registration for Temporary Protected Status." An accompanying letter from former counsel informed the director that because the motion to reopen was still pending, the applicant was applying as an initial late registrant. On November 13, 2003, the director approved the motion to reopen, and the applicant was requested on November 18, 2003, to submit the final court dispositions of any and all arrests, including his arrest listed on the Federal Bureau of Investigation fingerprint results report. In response, the applicant submitted the requested court documents. The director reviewed the record, he determined that the applicant was convicted of two or more misdemeanors, and denied the application on March 2, 2004. Concurrently, the director treated the second application (WAC 03 206 52862) as a re-registration application and determined that because the applicant's initial TPS application had been denied on February 26, 2004,¹ the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the second application on March 2, 2004.

The applicant filed a third TPS application on December 21, 2004, under CIS receipt number WAC 05 082 76198, and indicated that it was a "late registration for TPS." Again, the director treated the third application as a re-registration application and determined that because the applicant's initial TPS application was denied on March 2, 2004, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the third application on July 1, 2005. On August 15, 2005, the applicant filed an appeal from the denial decision and stated that he never received the director's March 2, 2004 denial notice. It is noted that the notice was sent to the applicant's most recent address at that time (1874 S. White Road, San Jose, CA 95148). There is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notice was returned to CIS as undeliverable. The director rejected the applicant's appeal on September 21, 2005, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on October 14, 2005, under CIS receipt number WAC 06 014 70088, and indicated that this is his "first application to register for Temporary Protected Status (TPS)." The director denied this fourth application on March 14, 2006, after determining that the applicant was ineligible for TPS based on his convictions of two misdemeanors. Accordingly, this application will be treated as the applicant's "first application" to register for TPS.

On appeal, the applicant asserts that the two misdemeanors were not convictions, and requests that the records previously furnished be reviewed.

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:

¹ It is noted that the director used an incorrect date of denial of the initial TPS application. The initial application was originally denied on January 17, 2002, the case was reopened on a motion on November 13, 2003, and a final decision to deny the initial application based on the motion was made on March 2, 2004.

- (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.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on October 14, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

To establish that the applicant is eligible for late initial registration because he is the spouse of an alien who has been granted TPS, the applicant resubmits a copy of his marriage certificate indicating that on February 10, 1999, during the initial registration period for Hondurans, the applicant married [REDACTED] in San Jose, California. He also resubmits a copy of the Employment Authorization Card of [REDACTED] a Honduran national, issued on August 30, 2003, under category A12. However, while regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow spouses of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. The provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two

or more misdemeanors, as is the case in this instance. 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 indicates that on February 2, 1992, in San Jose, California, the applicant was arrested for Count 1, possession of narcotic controlled substance, 11350(a) HS, a felony; Count 2, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 3, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor, and Count 4, driving without a valid license, 12500(a) VC, a misdemeanor. On May 5, 1992, in the Municipal Court of California, Santa Clara County Judicial District, Case No. C9280899, the applicant was convicted of Counts 3 and 4. The court granted drug diversion as to Count 1, and on September 25, 2002, the court dismissed the case based on the applicant's successful completion of the diversion. Count 2 was dismissed.

Diversion in California is not a conviction for immigration purposes; therefore, the applicant was not convicted of Count 1. However, the applicant is ineligible for TPS due to his two misdemeanor convictions (Counts 3 and 4 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.

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.