U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] [WAC 05 076 79496] Office: CALIFORNIA SERVICE CENTER Date: SEP 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.

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 stated 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 his initial TPS application on June 7, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 193 51491. The Director, Miami District Office, denied that application on May 6, 2002, because the applicant was not eligible for TPS due to his past conviction of a felony.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 15, 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.

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, through August 20, 1999. The record reveals that the applicant filed the instant application with CS on December 15, 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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).

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 also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

Although not addressed by the director, the record of proceedings contains the Federal Bureau of Investigation report reflecting the following offenses in Florida:

(1) On May 23, 1996, the applicant was arrested by the Metro-Dade [Florida] Police Department and charged with "Trespassing" and "Resisting Officer";
(2) On April 24, 1997, the applicant was arrested by the Metro-Dade [Florida] Police Department and charged with "Shoplifting";

(3) On May 22, 1997, the applicant was arrested by the Metro-Dade [Florida] Police Department and charged with "Grand Larceny", "Flee/Elude Police", "Hit and Run Property Damage", "Resisting Officer", "Burglary", "Burglary Tools-Posses", and "Possession Stolen Prop";
(4) On June 24, 1998, the applicant was arrested by the Metro-Dade [Florida] Police Department and charged with "Trespassing"; and,
(5) On November 10, 1999, the applicant was arrested by the Miami [Florida] Police Department and charged with "Prostitution".

According to the certified court dispositions from the Eleventh Judicial Circuit Court for Dade County, Florida, the applicant was convicted of the following offenses as a result of his arrest as detailed in No. 3 above: "Grand Theft 3rd Degree/Vehicle", Florida Statute 812.014(2)(C)(6), a felony; "Leaving Scene of Accident Involving Injury", Florida Statute 316.027, a felony; "Leaving Scene of Accident Involving Property Damage", Florida Statute 316.061(1), a misdemeanor; "Burglary of an Unoccupied Conveyance", Florida Statute 810.02(4)B, a felony; "Criminal Mischief $200 or less", Florida Statute 806.13(1)(b), a misdemeanor; "Possession of Burglary Tools", Florida Statute 810.06, a felony; "Resisting an Officer with Violence", Florida Statute 843.01, a felony; and, "Battery on a Law Enforcement Officer (4 Counts)", Florida Statute 784.07 and 784.03, a felony. It is noted that the applicant did not provide the final court dispositions for the additional charges identified above.

The applicant is not eligible for temporary protected status because he has been convicted of at least two misdemeanors and eight felonies committed in the United States. 8 C.F.R. § 244.4(a).

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.