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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **AUG 17 2007**
[consolidated with
[REDACTED]
[EAC 06 255 85275]

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, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application on the grounds that the applicant failed to establish his eligibility for late TPS registration, failed to submit a photo identity document, and failed to provide the final court disposition of a 1997 arrest in the State of California for driving while intoxicated (DWI).

On appeal the applicant submits a photocopy of his Honduran passport and final court dispositions for numerous arrests.

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 designated by the Attorney General 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.

- (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.

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.
8 C.F.R. § 244.1.

Honduran nationals applying for TPS must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The applicant filed his initial Form I-821, Application for Temporary Protected Status, on June 12, 2006 – nearly seven years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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 Citizenship and Immigration

Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On September 28, 2006, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence of his eligibility for late TPS registration, his continuous residence and physical presence in the United States from the dates applicable to Honduran nationals, his identity and Honduran nationality, and the final court disposition of a DWI arrest in California on July 28, 1997. The applicant submitted some documentation in response to the NOID.

On February 13, 2007, the director denied the application. While finding that the documentation submitted in response to the NOID established the applicant's Honduran nationality, his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999, the director determined that the applicant failed to establish that he was eligible to file a late TPS registration, failed to submit an identity document, and submitted documentation relating to a 1992 arrest rather than the final court disposition of his 1997 arrest.

On appeal the applicant submits a photocopy of his provisional Honduran passport with photo identification, issued by the Consulate General in Los Angeles. Thus, the applicant has furnished an identity document and has overcome that ground of denial. The applicant also submits final court dispositions for numerous arrests, however, which establish that he is not eligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The court dispositions are all from Municipal Courts in Los Angeles County, which show that the applicant was convicted of eight misdemeanor offenses – mostly DWI and driving with a suspended license – between 1990 and 1998. In addition, the applicant was charged with two felony counts of DWI in November 1992, which were forwarded to the Pasadena Superior Court in December 1992. The final disposition of those offenses is not in the record.

The final court dispositions provide clearly show that the applicant has been convicted of two or more misdemeanors committed in the United States, which makes him ineligible for TPS under the statutory and regulatory provisions cited above. In addition to that ground for denial, the applicant has still not submitted any evidence to show that he is eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the director's denial of the application for TPS will be affirmed.

In any future proceedings before CIS, the applicant must provide the final court dispositions of all his arrests.

The application will be denied for the above stated reasons, with each considered as an independent and alternative ground for denial. An alien applying for TPS 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 that burden.

ORDER: The appeal is dismissed.