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**U.S. Citizenship
and Immigration
Services**

M

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

[WAC 05 105 81724]

DEC 03 2007

Date: ~~NOV 29 2007~~
EXN

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:

[REDACTED]

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 (AAO) on appeal. The appeal will be sustained.

The applicant claims 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 a TPS application during the initial registration period under CIS receipt number EAC 99 212 53189. The director denied that application on May 11, 2004, but failed to specifically identify a basis for the denial. After a review of the record, the Chief, AAO, does not concur with the director's conclusion in that proceeding.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 13, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on July 1, 2005, because the applicant's initial TPS application had been denied.

The AAO will sua sponte reopen the proceeding EAC 99 212 53189, and will withdraw the director's denial of the application for TPS.

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.

In this case the director sent the applicant a Notice of Intent to Deny seeking copies of the final dispositions for two arrests on his criminal record. The record does not show a response, and the director subsequently denied the application on May 11, 2004. However, the director failed to specify a reason for the denial. The director denied the subsequent re-registration application because the applicant's initial application for TPS had been denied.

After a review of the record, it is noted that final dispositions for the applicant's criminal record have been entered. The applicant has been convicted of one misdemeanor in the United States. This does not render him ineligible for TPS. The director's decisions of May 11, 2004 and July 1, 2005, are withdrawn, and the applicant's appeal is sustained.



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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. In this case the applicant has to met this burden and the appeal will be sustained.

ORDER: The appeal is sustained.