U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] [WAC 05 104 75530] OFFICE: California Service Center DATE: DEC 28 2007

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, at the Texas Service Center (TSC) on August 23, 2001 [receipt number SRC 01 251 56899]. This filing was two years after the close of the initial registration period for Honduran nationals, which ran from January 5, 1999, to August 20, 1999. On October 9, 2003, the TSC Director issued a Notice of Intent to Deny (NOID) requesting the submission of evidence that the applicant was eligible for late TPS registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2), as well as a photo identity document. When the applicant failed to respond to the NOID within the requisite 30 days the director denied application on November 18, 2003, on the ground of abandonment. [1]

The applicant filed a subsequent Form I-821, which he identified as an application for re-registration of TPS, at the California Service Center (CSC) on January 5, 2005 [receipt number WAC 05 104 75530]. The CSC Director denied the application on July 22, 2005, on the ground that the initial TPS application had been denied, thereby making the applicant ineligible to re-register for TPS.

On appeal the applicant asserts that he has submitted all requested paperwork for TPS approval and that his application(s) for employment authorization were approved. Citizenship and Immigration Services (CIS) records confirm that the applicant's first Form I-765, Application for Employment Authorization, filed in conjunction with his initial Form I-821, was approved in October 2002 with a validity period running until July 5, 2003. This approval was based on the applicant's pending TPS application. Subsequent employment authorization applications were not approved, however, because the initial application for TPS was denied in October 2003. The applicant did not address the issue of the late filing of his initial TPS application, or why his re-registration application should be approved when his initial application was denied.

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. *See* 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. Accordingly, the CSC Director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant's file includes the results of a fingerprint background check conducted by the Federal Bureau of Investigation (FBI) which indicates that the applicant was arrested on September 30, 2001, by the Orange County Sheriff's Office on a felony charge of burglary, and that the applicant

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[1] The record indicates that the applicant did file a late response to the NOID which included a copy of the biographical page of his Honduran passport, including a personal photograph, thereby satisfying one of the evidentiary items requested in the NOID. However, the applicant submitted no evidence of his eligibility for late TPS registration.

pleaded guilty to a second degree felony charge of burglary with assault or battery on April 15, 2002. An alien who has been convicted of any felony or two or more misdemeanors committed in the United States is not eligible for TPS. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). For this additional reason the application for TPS cannot be approved. In any future proceedings before the CIS, the applicant must submit the final court disposition of this and any other arrests in the United States.

An alien applying for Temporary Protected Status, or 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.

It is also noted that the applicant originally entered the United States on February 17, 1997, and was ordered removed by an Immigration Judge in El Paso, Texas, on April 17, 1997. The applicant apparently left the country on his own, but states on the TPS applications he filed in 2001 and 2005 that he re-entered the United States without inspection on December 18, 1998.

ORDER: The appeal is dismissed.