



U.S. Citizenship  
and Immigration  
Services

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JAN 04 2007

FILE:

[REDACTED]  
[WAC 05 055 71004]

Office: California Service Center

Date:

IN RE:

Applicant:



PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF PETITIONER:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 an initial TPS application on July 26, 1999 under CIS receipt number SRC 99 236 53396. The Director, Texas Service Center, approved that application on February 25, 2002. Subsequently, on September 8, 2003, the director, Texas Service Center, withdrew the previous approval of the application because the applicant was no longer eligible for TPS status in that the applicant had a conviction of a felony. The director, in withdrawing the previous approval, noted that the record revealed that the applicant was arrested on January 25, 2002 by the Miami, Florida, Police Department for Conspiracy to Commit (Aggravated Assault with a Firearm). On April 4, 2002, under case number [REDACTED] the applicant was brought before the Miami-Dade County Circuit Court judge, and charged as an adult, and pleaded guilty to Assault/Aggravated/With a Deadly Weapon. The applicant was fined \$471.00 and sentenced to 12 months probation. The record does not reflect that the applicant filed an appeal, or a motion to reopen/reconsider, of that decision, within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 24, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application, on November 23, 2004, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant states that he is eligible for TPS. With his appeal, in an attempt to establish eligibility for TPS, the applicant submits copies of 4 mail receipts issued in 2003 for applications that he filed with CIS, and two letters from CIS, dated June 26, 2003, and July 10, 2003, notifying the applicant of incomplete information in his TPS application. The applicant did not submit additional evidence with the appeal.

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.

Furthermore, an alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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.

It is noted that as previously discussed, the Texas Service Center Director stated in her withdrawal letter that the record reveals that the applicant pleaded guilty to a charge of Assault/Aggravated/With a Deadly Weapon, and was convicted of a felony on April 4, 2002. Therefore, the applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, for this additional reason, the director's decision to deny the application will be affirmed.

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.