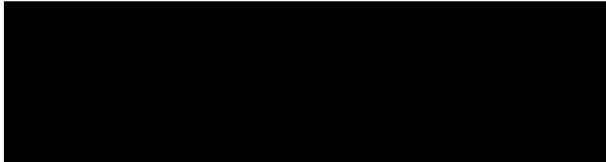




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



MA

FILE: [REDACTED]
[WAC 05 097 72939]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 05 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:



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 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 reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number WAC 99 155 50174, which was approved by the director on February 24, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant failed to maintain his conditions of eligibility by being convicted of two misdemeanors. The record of proceedings showed that the applicant had been convicted of cutting a utility line – a misdemeanor offense – on July 9, 2004, and driving a motor vehicle under the influence of alcohol/drugs – a misdemeanor offense – on December 19, 2002.

On appeal, counsel states that CIS was in error in concluding that the applicant had been convicted of two misdemeanors.

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.

The record reveals the following offenses:

- (A) On December 19, 2002, the Superior Court of the State of California convicted the applicant of the misdemeanor driving under the influence of alcohol/drugs.
- (B) On March 16, 2004, the Superior Court of the State of California convicted the applicant of the misdemeanor cutting a utility line.

On appeal, counsel states that the applicant has not been convicted of two or more misdemeanors. However, counsel has failed to submit any evidence to corroborate this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

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 failed to maintain the conditions of eligibility for TPS by being convicted of two misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1). If a decision to withdraw Temporary Protected status is entered by the AAO, the AAO shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in removal proceedings, if the alien is then removable. 8 C.F.R. § 244.14(c).

In this case, it has been determined that the applicant is ineligible for TPS due to his two misdemeanor convictions. Therefore, in accordance with 8 C.F.R. § 244.14, the prior approval of the applicant's TPS status is hereby withdrawn.

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 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 approval of the initial application is withdrawn. The appeal from the denial of the application for re-registration or renewal of temporary treatment benefits is dismissed.