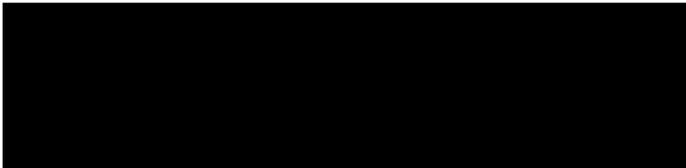




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



M1

FILE: [REDACTED]  
[WAC 05 070 73740]

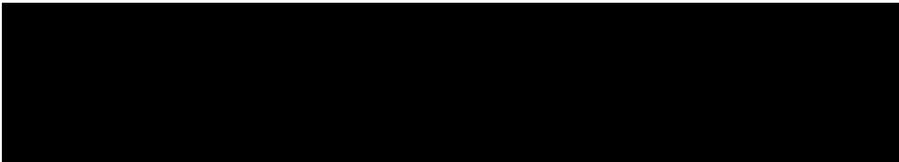
Office: California Service Center

Date: **JAN 31 2007**

IN RE: Applicant: [REDACTED]

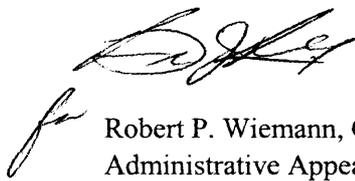
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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 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 June 10, 2002, under CIS receipt number SRC 02 197 55648. The Miami Acting District Director, Special Services Unit, denied that application on August 28, 2003, because the applicant had been convicted of a felony. The director noted that the applicant was convicted of Aggravated Battery in the Circuit Court of the Eleventh Judicial Circuit Court, Miami-Dade, Florida. The record does not reflect that the applicant filed an appeal or a motion to reopen/reconsider within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 9, 2004, and indicated that he was re-registering for TPS. The California Service Center director denied the re-registration application, on May 16, 2006, because of the applicant's conviction for Aggravated Battery in the Circuit Court of the Eleventh Judicial Circuit Court, Miami-Dade, Florida.

On appeal, in an attempt to establish his eligibility for TPS, the applicant states that he has been living in the United States since 1985, and he would like the opportunity to live and work in this country to support his family. With his appeal, the applicant resubmits:

1. A Complaint/Arrest Affidavit for an Arrest for DUI, by the Metro-Dade Police Department, on April 30, 1997; and
2. a court disposition for an arrest for Aggravated Battery, by the Miami Police Department, on March 4, 1995.

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.

It is noted that the record reveals:

1. A conviction, on May 30, 1995, on a finding of guilt for Aggravated Battery, and a two-year probationary sentence, by the Circuit Court of the Eleventh Judicial Circuit Court, Miami-Dade, Florida; and
2. A conviction on August 31, 1998, on a finding of guilt for Driving While Intoxicated, and a six months probationary sentence, by the Circuit and County Court, Dade County, Florida.

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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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 applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. As noted above, the record reveals a felony conviction for the applicant. 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, the director's decision to deny the application for TPS will be affirmed.

It is noted that the applicant was apprehended on entry, on February 8, 1992, placed in deportation proceedings, and ordered deported to Honduras by the Immigration Judge, on June 10, 1992, and deported to Honduras on June 24, 1992. The record does not reflect that the applicant submitted Form F-601, Application for Waiver of Grounds of Excludability. Therefore, the application will also be denied for this reason. 8 C.F.R. § 244.3(b)

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.