



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 096 75395]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

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 California Service Center. 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 claims to be a native and 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 99 179 52297 during the initial registration period. The Director, Texas Service Center, denied that application on December 20, 2002, because the applicant was convicted "obstruction by disguise" and driving under the influence, two misdemeanors committed in the United States.

The applicant filed the current Form I-821 on January 4, 2005, and indicated that he was re-registering for TPS.

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

If an alien is filing a re-registration application, 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.

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.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On February 24, 1996, the applicant was convicted of obstructing a police officer under Case Number [REDACTED] by a Judge in the Circuit and County Courts of the Eleventh Judicial Circuit of Florida in and for Miami-Dade County, a misdemeanor.
- (2) On May 9, 1997, the applicant was convicted of driving under the influence under Case Number [REDACTED] by a Traffic Division Judge in the Circuit and County Courts of Dade County Florida, a misdemeanor.

The applicant is ineligible for TPS because of the two misdemeanor convictions listed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Furthermore, the applicant's Federal Bureau of Investigation fingerprint results report shows that on June 7, 2003, in Florida, he was arrested by the Metro-Dade Police Department for prostitution and that he was convicted of this charge on June 8, 2003. However, the final court disposition of this arrest is not included in the record of proceeding.

It is noted for the record that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of his purported birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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.