

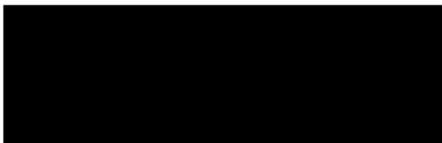


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M₁



FILE:



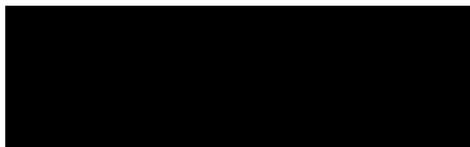
Office: VERMONT SERVICE CENTER

Date: NOV 28 2007

[EAC 99 221 50230]
[WAC 05 231 71560]

IN RE:

Applicant:



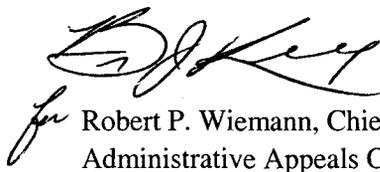
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's TPS application was initially approved by the Director, Vermont Service Center (VSC). The approval was subsequently withdrawn by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. A subsequent application for re-registration was also denied by the Director, CSC. The appeal will be sustained and the application will be approved.

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 EAC 99 221 50230. The application was approved on March 17, 2000. The Director, CSC, denied the applicant's re-registration application on October 5, 2006, because the applicant failed to submit the requested final court dispositions stemming from his arrests in the state of Massachusetts. The Director, CSC, subsequently withdrew the approval of the TPS application, pursuant to 8 C.F.R. § 244.14(a)(3), because the applicant had not successfully re-registered. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, the applicant stated that he failed to respond to the Notice of Intent to Withdraw because he never received it in the mail. The applicant submits copies of court dispositions stemming from his arrest in Massachusetts.

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 of proceedings shows that the applicant was arrested by the Boston Police Department in Massachusetts, and charged with leaving the scene of an accident/damage to property on April 20, 2002, and destruction or injury of personal property on August 6, 2004.

The court dispositions show that the April 20, 2002, case was dismissed by the court on October 9, 2003; and that the applicant was convicted of destruction of property, a misdemeanor, and placed on probation stemming from his arrest on August 6, 2004. The applicant has been convicted of one misdemeanor.

Since the applicant has overcome the sole ground for the denial of his initial application for TPS, that decision has been withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

An alien applying for 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 met this burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved.