



U.S. Citizenship  
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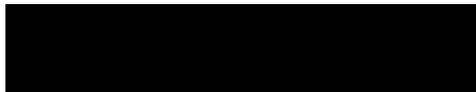
Office: CALIFORNIA SERVICE CENTER

Date: OCT 02 2007

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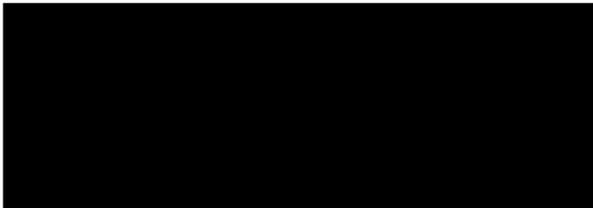
IN RE:

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 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 claims 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 a TPS application during the initial registration period on August 19, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 255 53475. The Director, Texas Service Center, denied that application on December 11, 2006, because the applicant failed to submit requested court documentation relating to her criminal record. The record does not reflect that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, and indicated that she 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.

On appeal, the applicant submits some of the requested court documents.

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 is not a current TPS registrant. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 4, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On appeal, the applicant provides some of the requested court documents. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On July 4, 1997, the applicant was arrested for "Criminal Trespass – Charge Agg Asslt. With a Deadly Weapon and Assault Causes Bodily Injury."
- (2) On June 25, 2005, the applicant was arrested for "Driving while Intoxicated."

Pursuant to a letter dated October 25, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to provide the requested court documents. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on December 11, 2006.

On appeal, the applicant provides final court documents for the June 25, 2005 arrest and for a July 20, 2003 arrest for "Driving While Intoxicated." The applicant failed to provide court documents for the July 4, 1997 arrest. According to counsel, the applicant completed the requirements of the June 25, 2005 and July 20, 2003 convictions and TPS should therefore be granted. However, the applicant was found guilty of two misdemeanors, regardless of the fact that she completed probation. The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court dispositions submitted reflect that the applicant was found guilty of the offenses and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of these offenses for immigration purposes.

The applicant has failed to provide a court disposition of her July 4, 1997 arrest detailed above. In addition, the applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). The applicant is also ineligible for temporary protected status because of her two misdemeanor convictions. 8 C.F.R. § 244.4(a).

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence since December 30, 1998 and continuous physical presence from January 5, 1999 to the filing date of the TPS application. It is also noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by photo identification. The applicant has also failed to provide a passport or any national identity document from the

alien's country of origin bearing photo and/or fingerprint to establish her nationality and identity. Therefore, the application must be denied for these reasons as well.

Beyond the director's decision, it is noted that the applicant is HIV-Positive. According to section 212(a) of the Act, applicants who are infected with a dangerous contagious disease are excludable. Human immunodeficiency virus (HIV) is defined as such a dangerous contagious disease. 42 C.F.R. 34.2(b)(4). However, applicants infected with HIV may, in certain instances, have such excludability waived. The applicant submitted a Form I-601, Application for Waiver of Ground of Excludability on September 21, 1999. That application was administratively closed.

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.