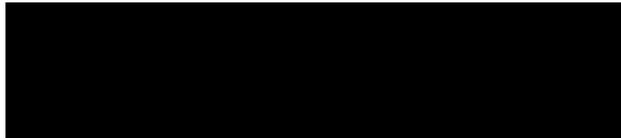




U.S. Citizenship
and Immigration
Services

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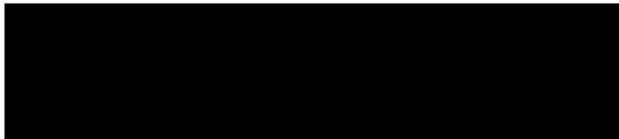
OFFICE: VERMONT SERVICE CENTER

DATE: OCT 05 2007

[EAC 06 256 75070]

IN RE:

Applicant:

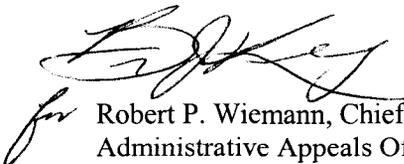


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application during the initial registration period on March 29, 1999, under receipt number WAC 99 135 51312. The District Director, Los Angeles, California, denied that application on April 8, 2004, because the applicant had been convicted of two misdemeanors. The applicant appealed the district director's decision to the AAO on May 4, 2004. The AAO reviewed the record and noted that court records indicate that the applicant was convicted on (1) August 7, 1990, of possession or purchase of cocaine base for sale in violation of § 11351.5 HS, a felony, and (2) on August 10, 1993, of providing false identification to an officer, in violation of § 148.0 PC, a misdemeanor. The AAO dismissed the appeal on March 2, 2005, after concluding that the applicant was ineligible for TPS due to her felony conviction, and because she was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act due to her drug-related conviction.

The applicant filed a TPS application on December 29, 2004, under receipt number WAC 05 090 83148, and indicated that she was re-registering for TPS. The Director, California Service Center, denied the re-registration application on May 12, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent TPS re-registration application, under receipt number EAC 06 221 77351, was filed on May 9, 2005. The VSC director administratively closed the application on December 12, 2006.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 13, 2006 (EAC 05 256 75070), and indicated that this is her "first application to register for Temporary Protected Status (TPS)." The VSC director denied the application on February 9, 2007, after determining that the applicant was ineligible for TPS based on her convictions of two misdemeanors; namely, § 11351.5 HS¹ and § 148.9 PC.

On appeal, the applicant submits a statement.

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

¹ A conviction of section 11351.5 of the California Health and Safety Code (H&S) [possession for sale or purchase for purpose of sale cocaine base] is punishable by "imprisonment in the state prison for a period of three, four, or five years;" therefore, this offense is classified a felony as defined in 8 C.F.R. § 244.1.

- (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.
- (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 condition described in paragraph (f)(2) of this section.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On August 7, 1990, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date July 2, 1990), the applicant was convicted of possession or purchase of cocaine base for sale, 11351.5 H&S, a felony. She was placed on probation for a period of 3 years, ordered to serve 6 months in the county jail, plus \$250 in fines and costs. On August 6, 1993, the applicant was found to be in violation of her probation and was ordered to serve 180 days in the county jail
- (2) On June 29, 1993, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 2, providing false identification to a peace officer, 148.9 PC, a misdemeanor; and Count 3, use/under influence of a controlled substance, 11550 H&S, a misdemeanor. [Count 1 was not included on the court document; it appears that this case involves two defendants as the applicant was listed as "Defendant 02."] On August 10, 1993, the applicant was convicted of count 2. She was sentenced to serve 30 days in the county jail. Count 3 was dismissed.

On appeal, the applicant asserts that she has "never been apprehended by any law enforcement official and/or charged with any misdemeanor or felony crimes throughout my entire residence in the United States;" therefore, she is eligible for TPS. This assertion of the applicant is without merit. The applicant, during earlier proceedings regarding her TPS applications, had furnished court documents relating to her arrests and convictions noted in Nos. (1) and (2) above.

Accordingly, the applicant is ineligible for TPS due to her felony conviction, detailed in No. (1) above, and because she is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on her drug-related conviction. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed her TPS application (EAC 06 256 75070) on June 13, 2006, after the initial registration period for Hondurans (from January 5, 1999 to August 20, 1999) had closed. The applicant, on appeal, asserts that she is eligible for late registration because she "carried with the Immigration Service a previous relief of removal from a pending RELIEF application." While the applicant, on appeal, did not identify the previous relief from removal, it is noted that the applicant submitted a letter with her TPS application stating that she is eligible for late initial registration because she previously had an asylum application.

A review of the record indicates that on January 21, 1994, the applicant filed Form I-589, Request for Asylum in the United States. On April 14, 1997, the Anaheim [California] Asylum Office found that the applicant was ineligible for asylum and her case was referred to any Immigration Judge (IJ). In removal proceedings held on September 16, 1998, in Los Angeles, California, the IJ found the applicant removable from the United States

and granted her voluntary departure on or before January 14, 1999, with an alternate order of removal if she failed to depart as ordered. The applicant failed to depart. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the denial of the asylum application, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), in this case, the expiration of her voluntary departure (January 14, 1999) to file an application for late registration under TPS. The applicant filed the current application for TPS on June 13, 2006.

The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application will also be denied for this reason.

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.