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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 22 2007
[WAC 05 272 70043]

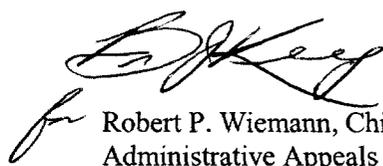
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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, California Service Center, 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 an initial TPS application on October 5, 2004, after the initial registration period had closed, under Citizenship and Immigration Services (CIS) receipt number WAC 05 014 53297. The director denied that application on January 28, 2005, because the applicant had not established eligibility for late registration in that he had failed to submit his birth certificate as proof of his relationship to [REDACTED] who had been granted TPS. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

As noted above, the applicant filed his initial application on October 5, 2004. In a notice of intent to deny the application dated November 18, 2004, the applicant was requested to submit evidence to establish that during the initial registration period he met the requirements for late registration. The applicant was also requested to submit the final court dispositions of all of his arrests, including arrests listed in the Federal Bureau of Investigation (FBI) fingerprint results report. In a response received on December 21, 2004, counsel provided court documents relating to the applicant's arrests. She indicated that the applicant is the child of an alien currently registered for TPS, and provided copies of Employment Authorization Cards for [REDACTED] Barrera issued on July 6, 2002, and September 13, 2003, under classification "A12." She further indicated that the applicant's birth certificate had been ordered from the authorities in Honduras and will be sent under separate cover. Because the applicant's birth certificate was not forwarded as indicated by counsel, the director denied the initial application on January 28, 2005. On appeal, dated April 25, 2006, counsel indicated that a "Second (2nd) Letter of Response and Supporting Documents" were sent to the California Service Center on December 29, 2004. She submits a copy of this second letter. There is no evidence in the record, however, that counsel's December 29, 2004 letter was received into the record of proceeding. It is noted that subsequent to the director's denial decision dated November 18, 2004, counsel submitted a letter dated March 21, 2005, that contained, among other documentation, a copy of the applicant's birth certificate.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 29, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on March 27, 2006.

On appeal, dated April 25, 2006, counsel asserts that the applicant is not applying for "re-registration" but did, and is in fact, applying for "Late Initial Registration." Counsel further asserts that critical evidence was ignored by the director in his Notice of Denial and he had failed to properly evaluate all evidence in the current application submitted in June 2005, and in fact, failed to evaluate all evidence in the previous application submitted in September 2004, in reaching his decision. Accordingly, this application will be treated as the applicant's "first application" to register for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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:
 - (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.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed

to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed the current TPS application with CIS on June 29, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 Citizenship and Immigration Services (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).

The record indicates that the applicant's mother, [REDACTED] (file # [REDACTED]), was granted TPS on June 23, 2000. The applicant's file also contains copies of [REDACTED]'s Employment Authorization Cards. While regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. The record indicates that the applicant was born on September 23, 1983. Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. While 8 C.F.R. § 244.2(g) allows the applicant a 60-day period immediately following the expiration or termination of condition, in this case, after his 21st birthday on September 23, 2004, to file a TPS application for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file his TPS application until June 29, 2005.

The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application will be affirmed.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors.

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 8 C.F.R. § 244.4(a).

The record indicates the following arrests and/or convictions in California relating to the applicant:

- (1) On May 21, 2001, the applicant was arrested for Count 1, burglary, 459/17(b)(4) PC, a misdemeanor; Count 2, receiving/concealing stolen property, 496(a)/17(b)(4) PC, a misdemeanor; and Count 3, vandalism/malicious mischief, 594(a)(b)(2)(A), a misdemeanor. On June 4, 2001, in the Juvenile Court of the Superior Court of the State of California, County of San Diego, the applicant admitted

as to the offense of Count 1; Counts 2 and 3 were dismissed. The court adjudged the applicant a ward of the court, and he was placed under the supervision of the probation officer. An adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. *See Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981).

- (2) The FBI report indicates that on January 14, 2002, in San Diego, California, the applicant was arrested and charged with force-assault with a deadly weapon not firearm-great bodily injury likely, 245(a)(1) PC. The final court disposition of this arrest is not contained in the record.
- (3) The FBI report indicates that on April 6, 2002, in San Diego, California, the applicant was arrested and charged with Count 1, brandishing firearm-replica, 417(4) PC; and Count 2, force-assault with a deadly weapon not firearm-great bodily injury likely, 245(a)(1) PC. The FBI report shows that the applicant was subsequently convicted of Count 2; however, the actual final court disposition of these charges is not contained in the record.
- (4) On January 24, 2003, in the Superior Court of California, County of San Diego, Case No. [REDACTED] (arrest date January 21, 2003), the applicant was indicted for Count 1, possession of marijuana, HS 11357(b), a misdemeanor; and Count 2, fighting in public, 415(1) PC, a misdemeanor. The court subsequently amended Count 2 as an infraction, and the applicant was convicted of Count 2. He was ordered to pay \$150 in fines and costs. The outcome as to Count 1 is not reflected in the court record.
- (5) The records of the Superior Court of California, County of San Diego, Case No. [REDACTED] indicate that the applicant was charged with Count 1, possession of marijuana, HS 11357(b), a misdemeanor; and Count 2, disturbing the peace, 415(1) PC, a misdemeanor. On July 29, 2003, the applicant was convicted of Count 2, and he was ordered to pay \$133 in fines and costs. The outcome as to Count 1 is not reflected in the court record.
- (6) The records of the Superior Court of California, County of San Diego, Case No. [REDACTED] indicates that on August 8, 2003, the applicant appeared for a hearing regarding his probation in relation to an arrest/and or conviction of assault with a deadly weapon, 245(a)(1) PC. The court's final disposition regarding this offense is not contained in the record.
- (7) The records of the Superior Court of California, County of San Diego, Case No. [REDACTED] indicate that the applicant was charged with Count 1, contributing to the delinquency of a minor, 272 PC, a misdemeanor; Count 2, unlawful sexual intercourse with a minor, 261.5(b) PC, a misdemeanor; Count 3, sexual battery, 243.4(a), a felony; and Count 4, resisting public or peace officers or medical technicians in the discharge of their duties, 149(a) PC, a misdemeanor. On May 4, 2004, the applicant was convicted of Count 1. He was placed on probation for a period of 3 years, and ordered to pay \$15 in fines and costs. Counts 2, 3, and 4 were dismissed.
- (8) On June 3, 2004, in the Superior Court of California, County of San Diego, Case No. [REDACTED] the applicant was convicted of disorderly conduct-under the influence of drug/alcohol 647(f) PC, a misdemeanor. He was placed on probation for a period of 3 years, and ordered to pay \$120 in fines and costs.
- (9) On January 28, 2006, in San Diego, California, the applicant (name used: [REDACTED]) was arrested for count 1, possession of marijuana; and Count 2, failed to appear after written promise. The final court disposition of this arrest is not contained in the record.

- (10) On February 21, 2006, in San Diego, California, the applicant was arrested for Count 1, possession of marijuana for sale; Count 2, possession of marijuana over 28.5 grams; and Count 3, selling marijuana. The final court disposition of this arrest is not contained in the record.
- (11) On May 12, 2006, in San Diego, California, the applicant was arrested for Count 1, possession of marijuana over 28.5 grams; Count 2, possession of marijuana for sale; Count 3, obstruct public officer; and Count 4, selling marijuana. The final court disposition of this arrest is not contained in the record.

The applicant was convicted of at least three misdemeanors, detailed in Nos. 5, 7, and 8 above, and his convictions continue to preclude a favorable finding of eligibility for TPS. Additionally, the applicant has failed to submit the final court dispositions of all of his arrests as had been requested by the director. Therefore, the application also must be denied for these reasons.

The record shows that on May 8, 2003, in San Diego, California, the Immigration Judge granted the applicant voluntary departure to Honduras on or before July 15, 2003. On July 17, 2003, the applicant departed from San Ysidro, California, by foot, into Mexico.

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.