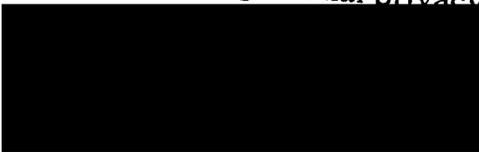




U.S. Citizenship
and Immigration
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MI

FILE: [REDACTED]
[WAC 05 103 70671]

OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 05 2007

IN RE: Applicant: [REDACTED] Z

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 for Temporary Protected Status was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Nicaragua who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application for TPS because the applicant had failed to provide documentation necessary for the adjudication of his application.

On appeal, counsel for the applicant asserts the applicant is eligible to TPS.

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

Persons applying for TPS offered to Nicaraguans must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The initial registration period for Salvadorans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on January 11, 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 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 October 16, 2005, the applicant was requested to provide evidence of his eligibility to file a late registration. The applicant provided a response but failed to articulate a basis of eligibility.

On December 13, 2006, the director denied the application because the applicant had not established eligibility to file a late registration.

On appeal counsel has provided documentation related to a motion to reopen the applicant's application for asylum. That motion to reopen, initially reopened, was then reversed and denied by the Immigration judge on November 16, 2004. Thus, the applicant's application for asylum had been denied on August 1, 2000. The applicant did not file an application for late initial registration within 60 days of the termination of the qualifying (f)(2) condition. The appeal will be denied for this additional 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.

The record reveals the following offenses:

- (1) On December 1, 1990, the applicant was arrested by the Metro-Dade Police Department for Hiring With Intent to Defraud and Disorderly Intoxication. Case No. [REDACTED] It appears these charges were not prosecuted.
- (2) On August 25, 1991, the applicant was arrested by the Metro-Dade Police Department for Aggravated Assault With a Weapon. Case No. [REDACTED] It appears these charges were not prosecuted.
- (3) On December 24, 1991, the applicant was arrested by the Hialeah Police Department for Battery and Disorderly Intoxication. Complaint No. [REDACTED]
- (4) On May 7, 1993, the applicant was arrested by the Metro-Dade Police Department for Driving Under the Influence. Case [REDACTED] The applicant was subsequently convicted of this charge on June 24, 1993.
- (5) On April 19, 1996, the applicant was arrested by the Metro-Dade Police Department for Driving Under the Influence. Case [REDACTED] The applicant was subsequently convicted of this charge on October 21, 1997.
- (6) On February 22, 1997, the applicant was arrested by the Metro-Dade Police Department for Battery. Case No. [REDACTED] Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
- (7) On June 12, 1999, the applicant was arrested by Hialeah Police Department for Driving Under the Influence. Case No. [REDACTED] It appears these charges were not prosecuted.
- (8) On November 6, 2003, the applicant was arrested by the Coral Gables Police Department for Driving Under the Influence. Case No. [REDACTED] The applicant was subsequently convicted of an amended charge of driving with a suspended license, § 322.34(2), on June 1, 2004.

On appeal, counsel for the applicant makes an unclear statement regarding the applicant's criminal convictions.

The record clearly establishes, and the applicant has admitted through counsel in other proceedings, that he has been convicted of two or more misdemeanors. The dispositions provided by counsel confirm that the applicant has been convicted of at least two misdemeanor convictions. Florida code section 322.34(2) is deemed as a misdemeanor by Florida, punishable by up to 60 days in jail. In addition, Florida code section 316.193 is deemed a misdemeanor by Florida, and is punishable by up to 6 months in jail for a first offense, up to 9 months in jail for a second offense. Both constitute misdemeanors for immigration purposes. Thus, regardless of the amount of time the applicant actually spent in jail, it is clear that the convictions revealed by the record constitute misdemeanors. Counsel's assertion on appeal that the applicant has not been convicted

of any misdemeanors for the purposes of immigration benefits, based on the fact that the applicant has avoided any jail time, is without legal merit and is not supported by the record.

The applicant is ineligible for TPS due to his conviction of at least two misdemeanors as detailed at Nos. 4, 5 and 8 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.