

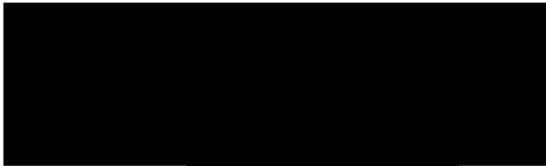
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U. S. Citizenship
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FILE:

OFFICE: VERMONT SERVICE CENTER

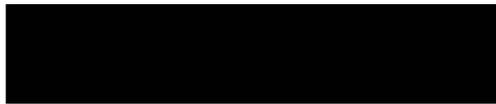
DATE: JAN 11 2008

[EAC 06 216 71599]

[_consolidated]

INRE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 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 director denied the application because the applicant failed to establish that he was eligible for late registration. The director also denied the application because he found the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant reasserts his claim of eligibility for TPS. The applicant acknowledges his convictions, but asserts that he was advised by the court appointed lawyer to plead guilty to the offenses.

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:
 - 0) 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 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

The record reveals that on September 14, 1994, the applicant filed a Form 1-589, Application for Asylum and Withholding of Removal. On December 18, 1995, the applicant's claim for asylum was not granted and his case was referred to an immigration judge. On September 11, 1996, an immigration judge issued an order granting the applicant voluntary departure in lieu of removal on or before March 11, 1997. The applicant's asylum and withholding of deportation application was withdrawn.

The record also reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Service (CIS) receipt number EAC9919950081 and was assigned alien registration number [REDACTED]. The director denied that application on November 26, 2003, because the applicant failed to submit requested court documentation relating to his criminal record.

It must be noted although the applicant did not submit actual court dispositions, he provided documentation from the Criminal History Systems Board of Massachusetts prior to the issuance of the director's decision. This document outlined the applicant's criminal history and revealed the applicant had pled guilty to at least two misdemeanor offenses. Accordingly, the director would have still denied the TPS application as these convictions would render the applicant ineligible for the benefit being sought. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The applicant filed his current TPS application with CIS on April 30, 2006, and indicated that it was his first application.¹

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).

"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.

¹ At the time the initial TPS application was filed, the applicant was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file [REDACTED], all the documentation from both TPS applications were consolidated into the prior A-file.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed this current application after the initial registration period had closed. 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.

On December 18, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court dispositions for all arrests including his arrests on January 1, 1998, February 21, 1999, and August 5, 2005. The applicant, in response, provided evidence of his identity, evidence to establish his continuous residence and physical presence in the United States and the requested court dispositions. The applicant indicated he had applied for asylum in 1994 and, as evidence, provided copies of three employment authorization cards issued on November 16, 1994, November 14, 1995, and September 5, 1996.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 12, 2007.

On appeal, the applicant claims he is eligible for late registration because he had an asylum application pending during the initial registration period.

The applicant's claim, however, is not supported by the record. The applicant has not met the threshold requirement for late registration as his Form 1-589 application was not pending or subject to further review or on appeal during the initial registration period. As previously noted, the order withdrawing the asylum and withholding of removal application was issued on September 11, 1996, 26 months prior to the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is the applicant's criminal history.

The record reveals the following misdemeanor offenses in the state of Massachusetts:

1. On December 14, 1997, the applicant was arrested by Chelsea Police Department and subsequently charged on January 23, 1998, with operating under the influence of liquor and operating a motor vehicle negligently so as to endanger the public. On May 19, 1998, the applicant pled guilty to both charges. The applicant was placed on probation and sentenced to serve 90 days in the House of Corrections with 30 of those days to serve concurrent with Docket nos. [REDACTED] and [REDACTED]
2. On January 1, 1998, the applicant was arrested by the Boston Police Department and subsequently charged on January 2, 1998, for operating under the influence of alcohol and resisting arrest. On May 8, 1998, the applicant pled guilty to both charges and was ordered to pay a fine; however, the adjudication of guilt was withheld until May 6, 1999. On June 30,

- 1999, the applicant's probation was extended to May 22, 2000. On May 30, 2000, the applicant's probation was terminated. Docket no. [REDACTED]
3. On January 21, 1998, the applicant was arrested by the Boston Police Department and subsequently charged with operation of motor vehicle after suspension or revocation of license. On May 7, 1998, the applicant was convicted of this charge. The applicant was sentenced to serve 60 days in the House of Corrections and ordered to pay a fine. Docket no. [REDACTED]
 4. On March 11, 1998, the applicant was arrested by Chelsea Police Department and subsequently charged with operating under the influence of alcohol. On May 19, 1998, the applicant pled guilty to the charge and was sentenced to serve 90 days in the House of Corrections. Docket no. [REDACTED]
 5. On February 21, 1999, the applicant was arrested by the Boston Police Department and subsequently charged on February 22, 1999, for assault and battery on a police officer and disorderly conduct. On June 30, 1999, the applicant pled guilty to both charges. The applicant was ordered to pay a fine. Docket no. [REDACTED]
 6. On August 5, 2005, the applicant was arrested by the Chelsea Police Department and subsequently charged with for operating under the influence of .08 percent or more alcohol, a 3rd offense and reckless operation of motor vehicle. On May 3, 1986, the charges were dismissed for want of prosecution. Docket no. [REDACTED]

In response to the Notice of Intent to Deny issued on December 18, 2006, the applicant submitted the court dispositions for numbers one through three and five and six above.

On appeal, the applicant claims that he was advised by the court appointed lawyer to plead guilty to each offense. The applicant contends that 40 percent of the police report is true as he never tried to assault any police officer.

The applicant should have raised these arguments in the appropriate appellate court. CIS does not have authority to look beyond the record of conviction when determining an applicant's eligibility for TPS.

The applicant is ineligible for TPS as he has been convicted of at least two misdemeanor convictions. 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.

It is noted for the record that on September 11, 1996, an immigration judge issued an order granting the applicant voluntary departure in lieu of removal on or before March 11, 1997. No satisfactory evidence has been introduced into the record to establish the applicant made a timely departure.

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 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 failed to meet this burden.

ORDER: The appeal is dismissed.