

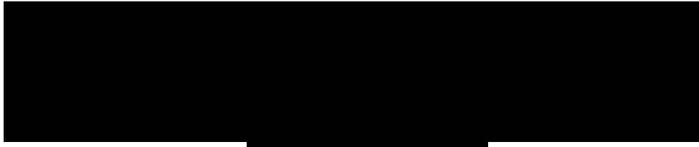
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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COpy,**

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FILE:



OFFICE: California Service Center

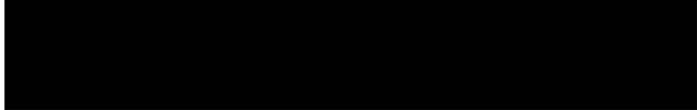
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**MAR 25 2008**

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INRE:

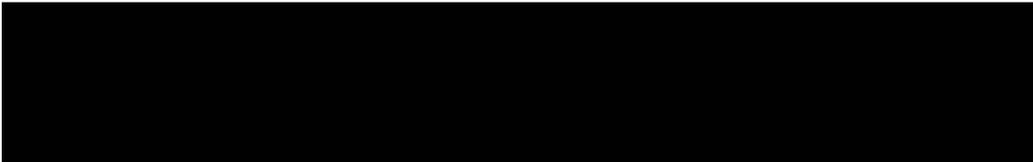
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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. 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 he determined that the applicant was ineligible for TPS because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant, through counsel, claims that he is in the process of reopening his last arrest in order to obtain a pre-trial diversion to dismiss his case.

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.

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 reflects that the applicant was arrested for the following offenses:

- (1) On January 14, 2000, the applicant was arrested by the Hialeah, Florida Police Department and charged with "Driving Under the Influence" (Florida State Statue 316.193), a misdemeanor offense. The applicant was found guilty on February 28, 2000; and,
- (2) On August 7, 2004, the applicant was arrested by the Metro-Dade, Florida Police Department and charged with "Driving Under the Influence" (Florida State Statue 316.193), a misdemeanor offense. The applicant was found guilty on October 25, 2004.

The director determined that the applicant was ineligible for TPS because the applicant committed two or more misdemeanors in the United States. Therefore, the director denied the application on October 15, 2005.

On appeal, the applicant, through counsel, states that he is attempting to reopen his last arrest in order to obtain a pre-trial diversion. On February 7, 2006, and again on June 23, 2006, counsel requested additional time in order to complete the process. However, as of the date of this notice, counsel has not provided any additional documentation. Therefore, the record will be considered complete.

A review of the court dispositions from the County Court of Dade County, Florida, reflects that the applicant he has been convicted of two or more misdemeanors committed in the United States detailed in Nos. 1 and 2 above. The applicant is not eligible for temporary protected status because he has been convicted of two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS re-registration on this ground is affirmed.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1). If a decision to withdraw Temporary Protected status is entered by the AAO, the AAO shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in removal proceedings, if the alien is then removable. 8 C.F.R. § 244.14(c).

In this case, it has been determined that the applicant is ineligible for TPS because he has been convicted of two misdemeanors committed in the United States. Therefore, in accordance with 8 C.F.R. § 244.14, the prior approval of the applicant's TPS is hereby also withdrawn.

An alien applying for Temporary Protected Status has the burden of proving that he 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 approval of the initial application is withdrawn. The appeal from the denial of the application for re-registration or renewal of temporary treatment benefits is dismissed.