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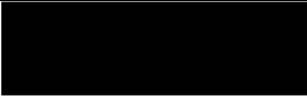


**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



FILE:



Office: California Service Center

Date: **MAY 06 2008**

[WAC 05081 72768]

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 Vermont Service Center. 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 July 13, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 226 52536. The Miami District Director denied that application on March 6, 2004, because the applicant failed to report for his scheduled interview. The record does not reflect that the applicant filed an appeal or a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 15, 2004, under CIS receipt number WAC 05 081 72768, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application, on June 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant reasserts his eligibility for TPS, and states that he has complied with all CIS requests. With the appeal, the applicant submits additional documents, including court disposition records.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant is not eligible for TPS because he has been convicted of two 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. See Section 244(c)(2)(B)(i) of the Act, and 8 C.F.R. § 244.4(a).

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 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 section 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:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,.... 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.

Although not addressed by the director, the record reveals two convictions for the applicant:

1. On May 25, 1995, the Circuit and County Court of Dade County, Florida, convicted the applicant, on a nolo-contendere plea, of "DRIVING UNDER THE INFLUENCE," a misdemeanor, in violation of Section 316.193. The applicant was sentenced to 11 days jail plus other restrictions, and fined; and,
2. On April 18, 1999, the Circuit and County Court of Dade County, Florida, convicted the applicant, on a nolo-contendere plea, of a in violation of Section 322.34(2), a misdemeanor. The applicant was sentenced to 12 months probation plus other restrictions, and fined.

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, also reflects two other arrests for the applicant:

1. On July 2, 1995, the applicant was arrested by the Police Department, Homestead, Florida, and charged with "DUI;" and,
2. On August 10, 2001, the applicant was arrested by the Police Department, Miccosukee, Florida, and charged with:- Charge 1: "BW DRIVING UNDER INFLUENCE;" and, Count 2: "DRIVING WHILE LICENSE SUSPENDED WITH KNOWLEDGE."

It is noted that final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests in any future proceedings.

Therefore, the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above, and he is not eligible to re-register for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). For this additional reason, the application for TPS must be denied, and the applicant remains ineligible for TPS.

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.