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U.S. Citizenship
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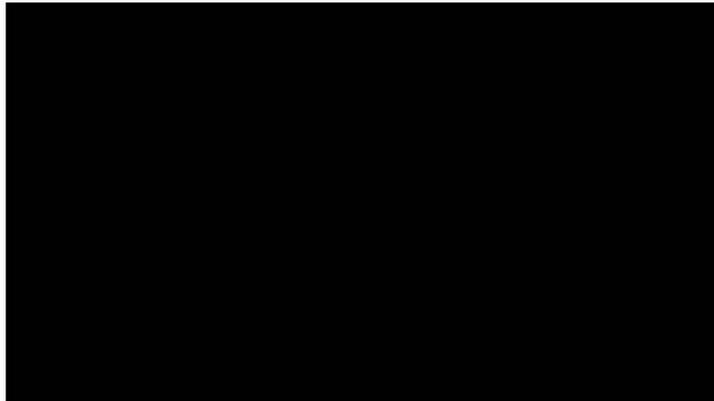
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Office: CALIFORNIA SERVICE CENTER

Date: NOV 28 2008

IN RE:

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 237 56968 after the initial registration period had closed. The Acting District Director, Miami, Florida, denied that application on September 7, 2002, after determining the applicant had failed to provide reports and certified court disposition documentation concerning his arrests.

The applicant filed the current Form I-821, on November 29, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

If an alien is filing a re-registration application, 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.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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.

The initial registration period for Honduras was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed his initial application on May 30, 2001, and the current application with CIS on November 29, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

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 reflects the following offenses:

- (1) The applicant's Federal Bureau of Investigation (FBI), fingerprint results report shows that on September 21, 1996, the applicant was convicted of petit larceny by a Judge of the Dade County Court in Florida, a misdemeanor. (Court No. [REDACTED])
- (2) The applicant's FBI fingerprint results report shows that on May 27, 1997, the applicant was convicted of loitering by a Judge of the Dade County Court in Florida, a misdemeanor. (Court No. [REDACTED])
- (3) The applicant's FBI fingerprint results report shows that on July 16, 1997, the applicant was convicted of loitering by a Judge of the Dade County Court in Florida, a misdemeanor. (Court No. [REDACTED])
- (4) The applicant's FBI fingerprint results report shows that on April 3, 1998, the applicant was convicted of trespassing by a Judge of the Dade County Court in Florida, a misdemeanor. (Court No. [REDACTED])
- (5) The applicant's FBI fingerprint results report shows that on May 8, 1998, the applicant was convicted of the possession of drug paraphernalia and resisting an officer without violence by a Judge of the Dade County Court in Florida, both misdemeanors. (Court No. [REDACTED])
- (6) The applicant's FBI fingerprint results report shows that on July 24, 1998, the applicant was arrested by the Miami Police Department and charged with trespassing, a misdemeanor.
- (7) The applicant's FBI fingerprint results report shows that on August 24, 1998, the applicant was convicted of possession of a controlled substance by a Judge in the 11th Circuit Court in Miami, Florida, a felony. (Court No. [REDACTED])
- (8) The applicant's FBI fingerprint results report shows that on September 18, 1998, the applicant was convicted of marijuana possession and purchasing cannabis, a felony and of marijuana possession, a misdemeanor, by a Judge in the 11th Circuit Court in Miami, Florida. (Court No. [REDACTED])
- (9) The applicant's FBI fingerprint results report shows that on April 18, 1999, the applicant was convicted of resisting arrest without violence by a Judge of the Dade County Court in Florida, a misdemeanor.
- (10) The applicant's FBI fingerprint results report shows that on May 27, 1999, the applicant was arrested by the Miami Police Department and charged with trespassing, a misdemeanor.

- (11) The applicant's FBI fingerprint results report shows that on June 13, 1999, the applicant was arrested by the Miami Police Department for consuming alcohol near a store selling alcohol, a misdemeanor.
- (12) The applicant's FBI fingerprint results report shows that on July 4, 1999, the applicant was arrested by the Miami Police department and charged with disorderly intoxication and carrying a concealed weapon, both misdemeanors.

To date, the applicant has not submitted court dispositions for his arrests listed as Items # 1 through # 12 listed above. This criminal record must be addressed in any future proceedings.

The FBI fingerprint results report also shows that the applicant was deported from the United States under the name [REDACTED] on August 12, 1986. The record also contains a Form I-205, Warrant of Deportation showing that the applicant was deported from the United States at Houston, Texas on February 17, 1989, under the name [REDACTED]

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.