



U.S. Citizenship
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FILE: [REDACTED] Office: California Service Center Date: **JAN 31 2007**
[WAC 05 090 82209]
[WAC 06 151 51812, *appeal*]

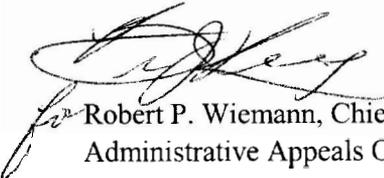
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER: 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.


for 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 on appeal. The appeal will be dismissed.

The applicant is stated to be 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 6, 1999 under CIS receipt number SRC 99 218 50253. The director denied that application on March 14, 2006, because the applicant failed to submit all of the evidence that had been requested. The director noted that on December 19, 2005, a notice to provide additional evidence was issued to the applicant giving the applicant 30 days to submit court dispositions for three arrests and related charges. With his response to the notice of intent to deny, the applicant submitted the following: a State of South Carolina Grand Jury Indictment, dated October 22, 2003, charging the applicant with Leaving the Scene of Personal Injury Accident with a court disposition, entered by the South Carolina Court of General Sessions, on February 5, 2004, showing a conviction on a guilty plea, and a 2-year probationary sentence, and a fine of \$200.00; 5 traffic tickets; a summary of disposition on a guilty plea for the following charges for the arrest on September 8, 2003: i) Open Container, in violation of South Carolina Statute Section 61-4-110, and ii) Disorderly Conduct in violation of South Carolina Statute Section 16-17-530; Public intoxication; a disposition for the City of Forest Acres Municipal Court, dated December 30, 2005, showing a conviction for the charge of Criminal Domestic Violence, and a fine of \$760.00 or 30 days in jail; and a South Carolina Identification Card. The applicant did not submit all of the requested evidence. Specifically, the documents did not address all of the charges contained in the Request for Evidence. The director, therefore, denied the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, under CIS receipt number WAC 05 090 82209, and indicated that he was re-registering for TPS. The director denied the re-registration application, on March 14, 2006, 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 states that he is submitting all of the information that he is able to obtain from the court. With the appeal, the applicant submitted the following: a State of South Carolina Grand Jury Indictment, dated October 22, 2003, charging the applicant with Leaving the Scene of Personal Injury Accident, with a court disposition, entered by the South Carolina Court of General Sessions, on February 5, 2004, showing a conviction on a guilty plea, and a 2-year probationary sentence, and a fine of \$200.00; 5 pages of case history showing convictions for Public Intoxication, with a fine of \$275.00; Open Container of Beer/Wine in Vehicle, with a fine of \$250.00; Improper Vehicle License, with a fine of \$150.00; No SC Driver's License, with a fine of \$232.50; and too Fast for Conditions, with a fine of \$76.50; a summary of disposition on a guilty plea for the following charges for the arrest on September 8, 2003: i) Open Container, in violation of South Carolina Statute Section 61-4-110; and ii) Disorderly Conduct in violation of South Carolina Statute Section 16-17-530; Public intoxication; disposition for the City of Forest Acres Municipal Court, dated December 30, 2005, showing a conviction for the charge of Criminal Domestic Violence, and a fine of \$760.00 or 30 days in jail; and a photocopy of the biographic page of his passport.

As noted by the director, in denying the initial TPS application, the applicant's response to the notice of intent to deny included some, but not all, of the evidence requested. Therefore, the director's decision to deny the application, for abandonment, is affirmed.

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 at least one felony conviction.

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.

It is noted that the record reveals a conviction for a felony entered by the South Carolina Court of General Sessions, on February 5, 2004, for the charge of Leaving the Scene of Personal Injury Accident, and a conviction on a guilty plea, a 2-year probationary sentence, and a fine of \$200.00.

Therefore, the applicant is ineligible for TPS due to his record of at least one felony, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application must also be denied for this additional reason.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status 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.