



U.S. Citizenship
and Immigration
Services

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FILE:



[WAC 05 055 73034]

Office: California Service Center

Date:

MAR 07 2007

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 office that originally decided your case. Any further inquiry must be made to that office.

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

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 June 21, 1999, under CIS receipt number SRC 99 204 54041. The Texas Service Center director denied the application, on June 17, 2003, because the applicant failed to respond, within 30 days, to a March 5, 2003 notice of intent to deny to submit evidence to establish his identity and nationality. The director considered the application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen/reconsider within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 24, 2004, and indicated that he was re-registering for TPS. The California Service Center director denied the re-registration application, on July 23, 2005, because the applicant's initial TPS application had been denied, and the applicant was not eligible to re-register for TPS.

On appeal, in an attempt to establish his eligibility for TPS, the applicant states that he has been living in the United States since 1981, and he would like the opportunity to live and work in this country to support his family. With his appeal, in an attempt to establish his continuous residence in the United States, and his continuous physical presence, the applicant resubmits various documents including CIS notices, birth certificates for his children, and pay stubs.

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 re-registration application for temporary protected status will be affirmed.

It is noted that the record reveals that the applicant has two misdemeanor convictions. Court dispositions in the record indicate that:

- 1) the applicant pled guilty, on June 6, 1991, in the County Criminal Court At Law No. 1 of Harris County, Texas, for the offence of Theft. The court imposed a sentence of 1 year probation; and fined the applicant \$200.00;
- 2) the applicant pled guilty, on November 30, 1989, in the County Criminal Court At Law No. 4 of Harris County, Texas, for the offence of DWI. The court imposed a sentence of 10 days confinement, and fined the applicant \$200.00, plus fees and cost.

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.

As noted above, the record reveals two misdemeanor convictions for the applicant. Therefore, the applicant is ineligible for TPS due to his record of at least two misdemeanors convictions, 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.

It is also noted that the record reveals that the applicant was placed in removal proceedings, and ordered removed from the United States by the Immigration Judge, on December 3, 2003. Therefore, the application will also be denied for this reason. 8 C.F.R. § 244.3(b)

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.