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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

MI



FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 07 2005

IN RE: Applicant:   
aka 

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.

Robert P. Wiemann, Director  
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 director denied the application because the applicant had been convicted of either a felony or two or more misdemeanors.

On appeal, the applicant states that he had recently lost his job and he has not been able to find an attorney to represent him. He further states that he needs an additional 90 days in which to gather evidence to show that he is a person of good moral character. To date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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.

The record reveals the following offenses:

- (1) On December 5, 1995, in the Tulare County Municipal Court District, Visalia Division, California, Case No. [REDACTED] (arrest date November 11, 1995), the applicant was convicted of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. He was placed on probation for a period of 60 months, ordered to spend 6 days in jail, pay \$1300 in fines and costs, and attend and complete DWI school.
- (2) On July 20, 1999, in the Tulare County Superior Court, Visalia Division, California, Case No. [REDACTED] (arrest date June 26, 1999), the applicant was convicted of disorderly conduct: public intoxication, 247(f) PC, a misdemeanor. He was placed on probation for a period of 12 months, and ordered to pay \$360 in fines and costs.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on June 9, 2003, after the initial registration period for Hondurans (from January 5, 1999 to August 20, 1999) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

It is further noted that the record of proceeding contains an outstanding Warrant of Deportation, Form I-205, issued on March 1, 1994, and that the applicant failed to appear at the Los Angeles district office on March 30, 1994, for his enforced departure.

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.