



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



MM

**JUL 25 2006**

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 800 17123]

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.

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 claims 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 a TPS application during the initial registration period under CIS receipt number WAC 99 120 52103. The director denied that application on December 18, 2001 due to abandonment, because the applicant failed to respond to the request for evidence.

The applicant filed a Motion to Reopen on October 9, 2003. The director granted the motion and on November 17, 2003, and January 14, 2004, requested the applicant submit copies of final court dispositions stemming from her arrest in 1999 and 2000.

On February 12, 2004, the applicant submitted copies of final court dispositions stemming from her arrests in 1999 and 2000. The director denied the TPS application on March 2, 2004, because the final court dispositions showed that the applicant had been convicted of two or more misdemeanors.

The applicant appealed the director's decision on April 5, 2004. The Director of the AAO rejected the appeal on May 2, 2005, noting that the original decision (denial due to abandonment) was not appealable to the AAO and therefore, the AAO had no jurisdiction to consider the April 2004 appeal.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration application on July 21, 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 states that the director's denial, dated July 21, 2005, was wrong because the 2004 TPS application (receipt number WAC 05 800 17123) was reopened and approved by the director on June 3, 2005. The applicant also states her initial TPS application (receipt number WAC 99 120 52103) was reopened by the director on July 7, 2005. The applicant reasserts her claim of eligibility for TPS.

Contrary to the applicant's assertions, the June 3, 2005 TPS approval was in error and will therefore be withdrawn. In addition, the July 7, 2005 notice is in reference to the applicant's 2004 TPS application (receipt number WAC 05 800 17123) not (receipt number WAC 99 120 52103).

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 applicant was arrested in Los Angeles, California and convicted of the following offenses:

- (1) On, or about March 29, 1999, the applicant was arrested or cited for reckless driving/no injury, a misdemeanor violation of VC 23103. The court document submitted by the applicant for this violation shows that she was convicted on or about October 15, 1999. Case No. 9CM03393.
- (2) On, or about December 15, 2000, the applicant was arrested or cited for driving a vehicle with a blood/alcohol content of .08% or greater, a misdemeanor violation of VC 23152(B). The court document submitted by the applicant for this violation shows that she was convicted on or about April 3, 2001. Case No. 1CM01264.

The applicant is ineligible for TPS based upon her record of two misdemeanor convictions, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Although the applicant states that she is in the process of having one conviction dismissed, Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991). Consequently, the director's decision dated June 3, 2005, to approve TPS application (receipt number WAC 05 800 17123) will be withdrawn and the director's initial decision to deny that application for the above noted reasons, will be affirmed.

A second issue is whether the applicant is eligible for re-registration. 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 was initially denied TPS and subsequently granted TPS in error. The initial TPS denial dated March 2, 2004, is affirmed due to the applicant's two misdemeanor convictions. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision dated July 21, 2005 to deny the re-registration application will be affirmed.

A third issue is whether the applicant is eligible to file a late initial application. 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 Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on December 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.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her continuous presence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. For these additional reasons, the TPS application will be denied.

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.