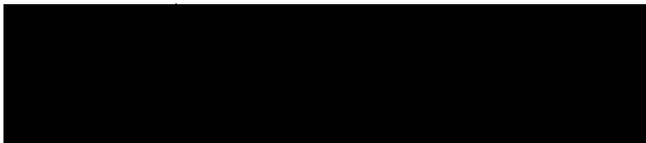


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FILE: [REDACTED]
[WAC 05 106 80597]

Office: CALIFORNIA SERVICE CENTER

Date NOV 17 2006

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 "Robert P. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 applicant filed his initial TPS application with Citizenship and Immigration Services (CIS) on August 3, 2001, under receipt number SRC 01 255 55237. The Director of the Texas Service Center denied that application on May 29, 2002, because the applicant failed to establish his eligibility for late initial registration and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 14, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on December 15, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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 who is a national of a foreign state designated by the Attorney General 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.
- (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 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on January 14, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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). The applicant has also failed to establish his qualifying

continuous residence and continuous physical presence in the United States throughout the requisite periods as described at 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

Furthermore, the record reveals that the applicant pled guilty in the District Court of Edwards County, Texas, 63rd Judicial District, on January 24, 1994, to the charge of possession of more than fifty (50) pounds but not more than two hundred (200) pounds of marijuana as set forth at section 481.121(c) of the Texas Drug Laws and the Health and Safety Code, a felony. He was sentenced to six years confinement in the Institutional Division of the Texas Department of Criminal Justice. It was further ordered that the imposition of the sentence be suspended and the applicant be placed on community supervision for a term of six years, provided the applicant commit no offense against the laws of Texas or any other State of the United States, **including particularly not entering the United States of America illegally following deportation from such country after conviction herein**, and provided that the applicant serve 120 days confinement in the Edwards County Jail. The record further indicates that the applicant was discharged from community supervision on April 14, 2000. The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction. **There is no waiver available for inadmissibility under this section of the Act. Therefore, the application also must be denied for these reasons.**

It is noted that the applicant was previously deported from the United States to Honduras on February 4, 1994, after his release from the Edwards County Jail. Clearly, the applicant violated his plea agreement by re-entering the United States after having been deported.

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.