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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 03 2006

[WAC 05 116 70788]

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 native and citizen of Honduras who is applying for 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 failed to establish that he was eligible for late registration. The director also found the applicant failed to submit requested court documentation related to his criminal record.

On appeal, the applicant submits a statement and additional evidence.

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.

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.
8 C.F.R. § 244.1.

The first issue in this proceeding is whether the applicant has established his eligibility for late initial registration.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his 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 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).

On October 6, 2005, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court dispositions of the following offenses:

- (1) On July 4, 1993, the applicant was arrested in Palm Beach County, Florida, and charged with one count of carrying a concealed weapon in violation of FL 790.01, a first-degree felony.
- (2) On January 1, 1996, the applicant was arrested in Palm Beach County, Florida, and charged with aggravated domestic assault with a weapon, specifically a bottle, in violation of FL 784.021, a third-degree felony.

The applicant, in response, provided court documentation relating to the offense detailed in No. (2) above; however, he did not provide any evidence to establish his eligibility for late initial registration.

The director determined that the applicant had failed to establish he was eligible for late initial registration and denied the application on January 12, 2006.

On appeal, the applicant states that he had previously submitted proof of a nationality and documents relating to his criminal record and he does not understand what other evidence is required to establish his eligibility for TPS.

The applicant indicated when he filed his TPS application that he was applying for re-registration or renewal of temporary treatment benefits. He stated, "This is an annual registration. . . . I have registered in all stages of the TPS [program] but your offices do not send it, or perhaps [it] is that I have been moving and it was lost. You have not given me an A# yet."

CIS computer records indicate that the applicant twice submitted initial TPS applications in 2005; both applications were rejected and returned to him as insufficient. (CIS receipt numbers WAC 05 064 77137 and WAC 05 090 86627). The applicant has subsequently filed another Form I-821, Application for Temporary Protected Status, with the Vermont Service Center under CIS receipt number EAC 06 231 73545. However, there is no indication in the record of proceedings or CIS computer records that the applicant filed an initial TPS application during the initial registration period. Therefore, the applicant's claim that he has filed previous TPS applications cannot be accepted.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant has submitted the final court dispositions of the offenses detailed in (1) and (2) above.

As previously stated, the applicant was requested on October 6, 2005, to provide the final court dispositions of the offenses detailed in Nos. (1) and (2) above. The applicant, in response, provided the following:

- (3) documentation from the 15th Circuit Court In and For Palm Beach County, Florida, indicating that the applicant pled guilty on July 13, 1993, to one count of carrying a concealed firearm in violation of FL 790.01(2), a felony in the third degree. The court withheld adjudication of guilt and placed the applicant on probation for a period of one year. [REDACTED] These documents relate to the arrest detailed in No. 1 above.
- (4) documentation from the 15th Circuit Court In and For Palm Beach County, Florida, indicating that the charge of aggravated assault with a bottle (domestic) was dismissed on December 19, 1996, and the applicant pled no contest (nolo contendere) to the amended charge of domestic assault in violation of FL 784.011, a misdemeanor. The court withheld adjudication of guilt and placed the applicant on probation for a period of six days. ([REDACTED]) These documents relate to the arrest detailed in No. (2) above.

The record confirms that the applicant pled guilty to one felony and one misdemeanor offense. The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

In Nos. (1) and (2) above, the applicant pled guilty to a felony charge and a misdemeanor charge and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been convicted of these offenses for immigration purposes.

The applicant is ineligible for TPS due to his record of one felony conviction and one misdemeanor conviction, 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 also be affirmed.

Beyond the decision of the director, the applicant has failed to submit any evidence to establish his identity and nationality as described at 8 C.F.R. § 244.9(a)(1). The applicant has also failed to submit sufficient evidence 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.

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 TPS 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.