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U.S. Citizenship
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Services

ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 28 2006**

[WAC 05 104 85516]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

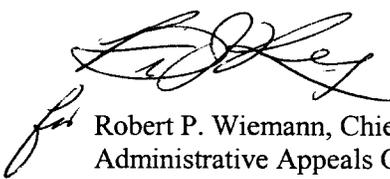
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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 (AAO) 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 record reveals that the applicant filed a TPS application during the initial registration period on May 14, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 161 53179. The District Director, Phoenix, Arizona, denied that application on December 10, 2003, because the applicant had been convicted of two or more misdemeanors. On January 5, 2004, the applicant filed an appeal from the denial decision. The AAO reviewed the record of proceeding and the evidence furnished on appeal and determined that the applicant was ineligible for TPS based on his record of at least two misdemeanor convictions. Therefore, the AAO affirmed the district director's decision and dismissed the appeal on August 12, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 12, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application 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 asserts that according to the letters from the Phoenix and the El Mirage Municipal Court, he has no criminal records on file. He further asserts that CIS had approved his request for TPS. He resubmits copies of court letters that were previously addressed by the AAO.

The assertion of the applicant that his TPS application had been approved is without merit. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

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 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 may apply for TPS during the initial registration period, or:

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

- (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 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 12, 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 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). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The court records previously furnished by the applicant, and as addressed by the AAO in the decision dated August 12, 2005, indicate that the applicant was convicted (1) on February 16, 1995, of failure to provide proof of financial responsibility, and (2) on July 3, 2000, of soliciting prostitution. The applicant submitted a letter from the Court Clerk, City of El Mirage, indicating that the court has no records on file regarding the applicant; however, the AAO noted that the Federal Bureau of Investigation fingerprint results report indicated that the applicant was arrested on November 12, 1992, for making a false report to a police officer, and that the applicant was subsequently convicted of this offense. The AAO also noted that the applicant was arrested in Arizona for driving without a valid license under Case [REDACTED] that a letter from the City of Phoenix Municipal Court stated that they are unable to locate any information regarding the applicant, and that the cases could have been purged from their records after five years,

scratched by the Prosecutor's Office, or heard in another court. The AAO maintained that the purging or destruction of court records was not evidence that conviction(s) had been dismissed, and that if the case were heard in another court, the applicant would have known where his court hearing had taken place. The AAO, therefore, dismissed the appeal on August 12, 2005, after determining that the applicant was ineligible for TPS due to his record of at least two misdemeanors and because the applicant had failed to provide the final court dispositions of all of his arrests.

The applicant was convicted of at least two misdemeanor offenses, and his convictions continue to preclude a favorable finding of eligibility for TPS. Also, the reasons for the initial denial have not been overcome. Therefore, the application also must be denied for this reason.

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.