

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M



FILE:



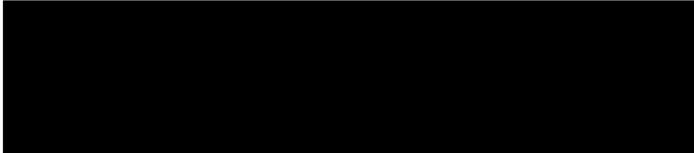
Office: CALIFORNIA SERVICE CENTER

AUG 17 2007
Date:

[WAC 05 097 78497 as it relates to
WAC 99 219 51454]

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 currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 4, 2000. The service center director subsequently withdrew the applicant's TPS on March 9, 2004, because he found that the applicant was ineligible for TPS because of his record of two or more misdemeanor convictions. On April 16, 2004, more than 33 days after the withdrawal of his TPS, the applicant filed an appeal from the withdrawal decision. The service center director rejected the appeal as untimely filed on October 5, 2005.

The applicant filed the current re-registration application on January 5, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on April 25, 2006, because the applicant's TPS had been withdrawn and the applicant was not eligible for re-registration for TPS.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following offenses:

1. On April 10, 2001, the applicant was arrested in Redwood City, California, and charged with one count of burglary in the first degree, one count of conspiracy to commit a crime, and one count of possession of burglary tools. The FBI report indicates that the applicant was subsequently convicted on the charge of burglary in the second degree in violation of section 460(b) PC, a misdemeanor.
2. On October 17, 2001, the applicant was arrested in Oakland, California, and charged with one count of burglary, one count of attempt to commit burglary, one count of attempt to commit vehicle theft, and one count of obstructing a public officer.
3. On January 25, 2002, the applicant was arrested in Martinez, California, and charged with one count of burglary and one count of burglary in the first degree.
4. On February 25, 2002, the applicant was arrested in Oakland, California, and charged with one count of burglary in the first degree and one count of receiving known stolen property.
5. On May 22, 2002, the applicant was arrested in Martinez, California, and charged with one count of burglary, one count of receiving known stolen property, and one count of probation violation. The FBI report indicates that the applicant was subsequently convicted in the Municipal Court, Walnut Creek, California, on one count of burglary in the second degree in violation of section 460(b) PC, a misdemeanor.

On November 12, 2003, the applicant was requested to provide the final court disposition of all arrests since his arrival in the United States and a police clearance from every city in which he has resided since his arrival in the United States. The record does not contain a response from the applicant.

As previously stated, the director withdrew the applicant's TPS on March 9, 2004, because he found the applicant had been convicted of two or more misdemeanors. The director should have withdrawn the applicant's TPS because the applicant failed to provide the final court dispositions of the offenses detailed above. Nevertheless, the fact remains that the applicant has had three opportunities to provide the final court dispositions of the offenses detailed above, in response to the Notice of Intent to Withdraw, on appeal from the withdrawal decision, and finally, on appeal from the current re-registration denial decision.

The applicant has failed to provide court documents reflecting the final court dispositions of his arrests, AS detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). There is no waiver of this ground of ineligibility. Consequently, the director's decision to withdraw the applicant's TPS will not be disturbed.

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's TPS has been withdrawn. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the current application for re-registration will be affirmed.

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.