



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: California Service Center

DATE:

**DEC 04 2007**

[WAC 99 111 50622]

[WAC 05 047 75522]

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. Wienmann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (CSC), withdrew the applicant's previously granted Temporary Protected Status and denied the application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). 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.

The director withdrew the applicant's previously granted TPS on the ground that he failed to establish his eligibility for such benefits and denied the re-registration application on the ground of abandonment, because the applicant failed to adequately respond to the Notice of Intent to Withdraw, dated October 17, 2005, requesting evidence of the final court disposition(s) of two arrests by the Inglewood Police Department in Inglewood, California.

On appeal, the applicant submits the final court disposition of his second arrest by the Inglewood Police Department, supplementing the final court disposition of his first arrest that was previously submitted in response to the Notice of Intent to Withdraw.

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 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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

An alien shall not be eligible for TPS 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” as follows:

*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 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 Citizenship and Immigration Services (CIS). *See* 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 the burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, at the CSC on January 27, 1999 [WAC 99 111 50622]. It was approved on September 7, 2004. The applicant filed the re-registration application currently on appeal [WAC 05 047 75522] at the CSC on November 16, 2004.

On October 17, 2005, the director issued a Notice of Intent to Withdraw (NOIW), advising the applicant that an alien convicted of a felony or two or more misdemeanors committed in the United States is ineligible for TPS under 8 C.F.R. § 244.4(a) and requesting the applicant to submit evidence of the final court disposition(s) of two arrests by the Inglewood Police Department on March 4, 1997, and on August 29, 2002. The applicant responded by submitting the final court disposition of the first arrest, but not the second.

On April 10, 2006, therefore, the director issued a Notice of Withdrawal of TPS and Notice of Decision to Deny TPS Re-Registration, in which he (1) withdrew the applicant's previously granted TPS on the ground that he had failed to establish his eligibility and to comply with the re-registration requirements, in accordance with section 244(c)(3)(A) and (C) of the Act and the regulations at 8 C.F.R. § 244.14(a)(1) and (3) and § 244.17(a) and (c); and (2) denied the re-registration application on the ground of abandonment, citing the regulation at 8 C.F.R. § 244.9(c).

The applicant appealed the withdrawal of TPS and submitted the final court disposition of his second arrest in August 2002, which supplemented the final court disposition previously submitted of his first arrest in March 1997. Thus, the record includes the final court dispositions of the Municipal Court of Inglewood, County of Los Angeles, State of California, for both of the applicant's arrests. With respect to the second arrest, on August 29, 2002, the applicant was convicted on April 11, 2003, based on a plea of nolo contendere, of violating section 23152(B) of the California Vehicle Code – driving with a blood alcohol weight of 0.08% or more – a misdemeanor under California law. As for the first arrest, on March 21 (not March 4), 1997, the applicant was convicted on May 19, 1997, based on a plea of nolo contendere, of violating section 647(f) of the California Penal Code – disorderly conduct under the influence of alcohol or a drug – also a misdemeanor under California law. Both of the foregoing offenses are punishable by more than five days of imprisonment.

Thus, the record establishes that the applicant has been convicted of two misdemeanors committed in the United States. Accordingly, he is ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The director's decision withdrawing the applicant's TPS, and denying his re-registration application, will therefore be affirmed. The appeal will be dismissed.

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 that burden.

**ORDER:** The appeal is dismissed.