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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2007
[WAC 05 099 74162 as it relates to SRC 99 259 52496]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the California Service Center. 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 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, during the initial period. The director denied that application on May 29, 2003, after determining that the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny dated August 14, 2002, requesting that the applicant provide the final disposition for his June 29, 1996 arrest for "F POSS/PUR COKE BASE FOR SALE."

A subsequent late motion to reopen was also dismissed by the Director, Texas Service Center on August 8, 2003.

The applicant filed the current Form I-821, on January 7, 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.

If an alien is filing a re-registration application, 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.

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.

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, 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.

On June 3, 2003, the applicant submitted a copy of his court disposition from the Superior Court of California, County of Los Angeles dated August 29, 1996. It shows that initially, he was charged with the possession of cocaine base for sale in violation of section 11351.5 of the State of California Health and Safety Code (H&S), a felony, and the transporting of a controlled substance for sale in violation of section 11352.A H&S, a felony. On motion to the court, the Judge allowed him to withdraw his plea of nolo contendere for the two charges and to enter a plea of guilty to a violation of the possession of a controlled substance for sale in violation of section 11351 H&S, a felony. Because the applicant has been convicted of a felony and has been convicted of a violation of a law relating to a controlled substance, his appeal shall be dismissed for this additional reason(s).

It is noted that on August 29, 1991, the applicant was deported from the United States and later reentered this country illegally. Subsequently, in removal proceedings held on November 21, 1995, an Immigration Judge in Los Angeles, California, ordered the applicant deported "in absentia" to Honduras. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the District Director of the Los Angeles, California, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on July 17, 1996.

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 cited 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.