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U.S. Citizenship  
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FILE:

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OFFICE: California Service Center

DATE:

[WAC 05 077 75869]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

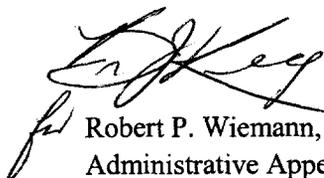
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The re-registration application was denied by the Director, California Service Center (CSC). The application is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 his initial TPS application on April 26, 1999, under Citizenship and Immigration Service (CIS) receipt number EAC 99 198 50763. The Vermont Service Center (VSC) director denied the application on December 9, 2002, because he had determined that the applicant had been convicted of a felony offense; and therefore, was ineligible for TPS. On January 7, 2003, the applicant filed an appeal.

On June 30, 2003, the VSC director approved the TPS application as reflected by an approval stamp on that application.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, as a re-registration on December 4, 2004. The CSC director denied this application because he determined that the applicant was ineligible for TPS based on his conviction of a felony committed in the United States.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of the applicant's claim.

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.

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.

The record reveals that the applicant was arrested by the Jersey City Police Department on May 7, 1994, and charged with Robbery, a felony.

The director determined that the applicant was ineligible for TPS based on his criminal record. Therefore, the director denied the application on March 16, 2005.

On appeal, counsel states that the applicant was not convicted of robbery; however, the applicant was charged with harassment, a "petty disorderly persons" offense, not a felony. Counsel also provides a copy of the court disposition from the New Jersey Superior Court dated June 6, 1995, reflecting that the applicant was charged with Harassment (2C:33-4) and that he was placed on probation for one year.

A review of the court disposition reflects that the original charge of robbery was amended to harassment. New Jersey law states that harassment (NJS 2C:33-4) is a "petty disorderly persons offense." In accordance with NJS 2C:43-8, a person who has been convicted of a "petty disorderly persons offense" may be sentenced to a maximum imprisonment for a period of 30 days. As reflected by the record, the applicant was charged with only one misdemeanor. Therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.

**ORDER:** The appeal is sustained.