

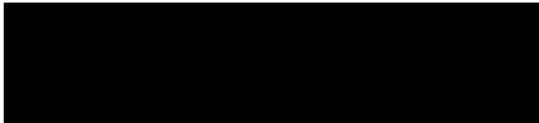


**U.S. Citizenship
and Immigration
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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: FEB 01 2008 .
[EAC 99 18351037]
[WAC 05 10577185]

INRE: 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 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, Vennont Service Center, and is now before the **Administrative Appeals Office (AAO)** on appeal. The initial application will be re-opened and dismissed, and the applicant's appeal of the re-registration denial will also be dismissed.

The applicant claims to be a 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 director denied the re-registration application on August 15, 2005. The director denied the initial application on December 23, 2003; however, the record does not clearly indicate that the applicant was issued a decision on his original application, submitted March 9, 1999. As the applicant was not notified of the denial of his application, the AAO will re-open the initial application and review the decision.

The director denied the application because the applicant failed to establish that he was prima facie eligible for TPS.

On appeal, the applicant asserts he is eligible for TPS.

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 designated by the Attorney General 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.

(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.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2009, upon the applicant's re-registration during the requisite period.

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.

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). 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 (eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reveals that the applicant has a number of convictions on his criminal record. The known charges and convictions are as follows:

1. On September 8, 1993, the applicant was arrested for and subsequently convicted of Purchasing Marijuana, FL Title XLVI Chapter 893.13(6)(b), a 1st Degree Misdemeanor, by the Miami Police Department. It appears he was subsequently convicted of this offense; however, the actual court disposition has not been provided.
2. On December 21, 1996, the applicant was arrested by the Fairfax County Police Department for Petit Larceny; Concealment of Merchandise, VA COAG § 18.2-103, a misdemeanor. It appears he was subsequently convicted of this offense; however, the actual court disposition has not been provided.
3. On July 5, 2000, the applicant was arrested for Petit Larceny, VA COAG § 18.2-95, in the General District Court of Fairfax County, Virginia. It appears he was subsequently convicted of this offense; however, the actual court disposition has not been provided.
4. On June 29, 2000, the applicant was convicted of Driving While Intoxicated, VA COAG § 18.2-226, a class 1 misdemeanor, in the General District Court of Fairfax County, Virginia. Case No. 3914394.
5. On April 20, 2000, the applicant was convicted of Domestic Assault, VA COAG § 18.2-57.2, a class 1 misdemeanor, in the Domestic Relations District Court of Fairfax County, Virginia. Case No.
6. On May 21, 2002, the applicant was charged with Driving Under a Suspended License in the Fairfax County General District Court.

Pursuant to a letter dated February 22, 2001, the applicant was requested to present the final court disposition for each of the charges detailed above. The applicant did not respond.

The director denied the application, concluding that the applicant was ineligible due to his multiple misdemeanor convictions detailed above.

The record reveals a long criminal history of the applicant, including arrests for Petit Larceny, Driving While Intoxicated (class 1 misdemeanor), Domestic Assault (class 1 misdemeanor), and Concealment of Merchandise. The record contains the final dispositions of the DWI and Domestic Assault convictions, establishing that the

applicant has been convicted of at least two misdemeanors in the United States and is therefore ineligible for TPS as a matter of law. Consequently, the director's decision to deny the application for this reason will be affirmed.

The **director's** denial of the original application will be affirmed on separate grounds as the applicant was statutorily ineligible for TPS at the time of the denial. In addition, since the applicant is statutorily ineligible for TPS the denial of the re-registration application will also be affirmed.

An alien applying for TPS 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.