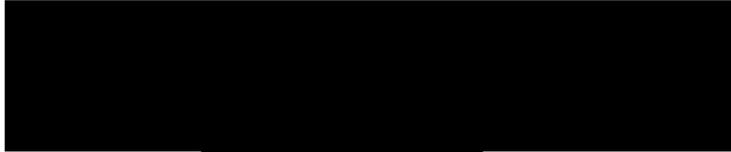




U.S. Citizenship
and Immigration
Services

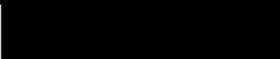
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prevent clearly unwarranted
invasion of personal privacy



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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

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IN RE:

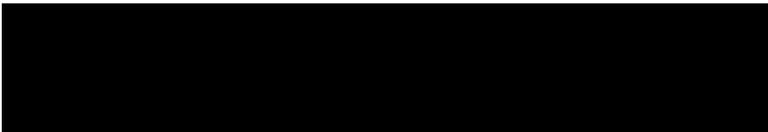
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), withdrew the applicant's previously granted Temporary Protected Status (TPS) and administratively closed the application for re-registration. The matter 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 director withdrew the applicant's TPS status and denied the re-registration application on June 8, 2007, because the applicant had been convicted of two misdemeanors.

On appeal, counsel states:

The Service erroneously denied the Respondent's TPS application on the basis of two alleged misdemeanor convictions. Yet, the information found in the "A" file, as set forth in that decision provides that the applicant was convicted in 1991 for a DUI violation. The decision also makes reference to a 365 jail sentence for the same 1991 arrest! Given that the sentences relate to one misdemeanor, notwithstanding any subsequent probation violations, this case was denied error. As such, [REDACTED] TPS status should be re-instated.

The VSC Director withdrew the applicant's TPS following the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 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.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

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 reflects the following offenses:

- (1) June 4, 1990, the applicant was convicted by a Judge in the Municipal Court of Los Angeles, San Pedro Judicial District, County of Los Angeles, State of California, of “.08% MORE WGHT ALCHL DRIVE VEH,” a misdemeanor. (Case Number [REDACTED])
- (2) On March 12, 1991, the applicant was convicted by a Judge in the Municipal Court of Los Angeles, San Pedro Judicial District, County of Los Angeles, State of California, of “.08% MORE WGHT ALCHL DRIVE VEH,” a misdemeanor, and driving with a suspended license, a misdemeanor. (Case Number of [REDACTED])

The applicant's Federal Bureau of Investigation fingerprint results report shows the following:

- (3) On May 6, 2005, the applicant was arrested by Los Angeles Police Department for one count of “DUI ALCOHOL/DRUGS.” Despite the director's March 20, 2007 request, the applicant failed to provide the actual court disposition for this offense.

Counsel asserts on appeal that the charges cited by the director relate to “the same 1991 arrest!” However, court records provided by the applicant, himself, confirm three misdemeanor convictions as detailed in items number (1) and (2) above.

The applicant is ineligible for TPS due to his record of three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS and deny the re-registration application is affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.