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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

Date:

JAN 30 2008

[SRC 99 259 51374]

[EAC 06 221 76377]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

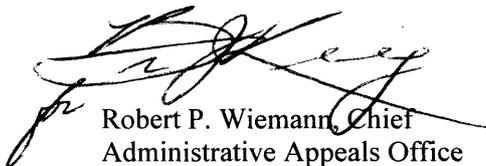
Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

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 application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the AAO, and the application will be approved. The appeal for the current application will be sustained and the application will be approved.

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 current application because the applicant failed to establish that he was eligible for late registration. The director also denied the application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant never received the Notice of Intent to Deny dated February 20, 2007. Counsel submits the requested court documentation.

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.

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).

"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. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

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

The record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number SRC9925951374, which was denied by the District Director, Miami, Florida, because the applicant failed to submit requested court documentation. The applicant's appeal from the denial of that application was dismissed on October 31, 2005, as the AAO concurred with the district director's findings.

The applicant filed a second TPS application under CIS receipt number WAC0504975732, and indicated that he was re-registering for TPS. The Director, Western Service Center, 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. The applicant's appeal from the denial of that application was dismissed on October 23, 2006, as the AAO concurred with the director's findings.

The applicant filed the current TPS application on May 7, 2006, and indicated that he was filing for late registration.

The FBI record reflects that on September 20, 1993, the applicant was arrested by the Metro-Dade Police Department in Miami, Florida for driving under the influence, a violation of statute 316.193.

On February 20, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his arrest for driving under the influence. The applicant was requested to submit the final court disposition for the charge. The applicant, however, failed to respond to the notice.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on April 5, 2007.

On appeal, counsel submits court documentation from the traffic division of the Miami-Dade Circuit and County Courts, which indicate that on January 16, 2001, the prosecutor entered *nolle prosequi* for the driving under the influence charge. Case no. 39742EG.

As the applicant has satisfied the director's request for the final court disposition of this charge, and he has not been found ineligible pursuant to 8 C.F.R. § 244.4(a), the director's finding in this matter is withdrawn.

A review of the documentation submitted to establish continuous residence and physical presence in the United States during the requisite periods is sufficient to establish that the applicant has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

As the record does not reflect any grounds that would bar the applicant from TPS, the initial application filed will be approved. Accordingly, the appeal from the denial of this late registration application will be sustained and will be considered to be a re-registration application and will also be approved. The applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

**ORDER:** The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved.