

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

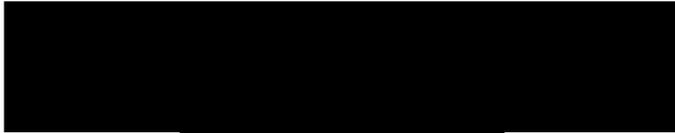
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M<sub>1</sub>

**PUBLIC COPY**



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER  
[SRC 99 222 52647]  
[WAC 05 064 75582-re-registration]  
[WAC 08 017 51851-motion]

Date: JAN 30 2008

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 the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The order dismissing the appeal will be withdrawn. The appeal will be sustained.

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 withdrew the applicant's TPS because he found the applicant had failed to submit requested court documentation relating to his criminal record.

The applicant's appeal from the denial of his application was dismissed by the AAO on September 20, 2007, as the AAO concurred with the director's findings. On motion to reopen, counsel submits the requested the final court disposition.

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).

"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 director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The FBI record dated June 9, 2005, reveals that on December 13, 2001, the applicant was arrested by the Lancaster Police Department in South Carolina for criminal domestic violence, 1<sup>st</sup> offense.

The applicant failed to respond to a Notice of Intent to Withdraw TPS issued on September 29, 2005, which requested the final court disposition for the above arrest.

On appeal from the decision to withdraw TPS, the applicant only submitted a criminal history inquiry from the Lancaster Police Department.

On motion, counsel provides court documentation from the Lancaster Municipal Court reflecting that on January 9, 2002, the applicant was convicted of a misdemeanor for the above offense. The applicant was ordered to pay a fine or serve 15 days in jail. Docket no. [REDACTED]

The applicant has overcome the single documentary deficiency and the single misdemeanor conviction does not render the applicant ineligible for TPS pursuant to 8 C.F.R. § 244.4(a). Accordingly, the record does not reflect any grounds that would bar the applicant from maintaining his TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application 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.