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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FEB 24 2010

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[EAC 09 113 82202]

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:

Self-represented

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also denied the application because the applicant failed to submit the requested court disposition for his arrest on September 18, 2004.¹

On appeal, the applicant asserts that he submitted the requested court disposition and submits additional copies. The applicant asserts that he was arrested under warrant on September 18, 2004, due to his failure to pay a \$75.00 fee. The applicant asserts that he never received the Notice of Intent to Withdraw his 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;

¹ The director inadvertently noted that the arrest occurred on October 18, 2004.

- (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).

"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 first issued to be addressed is the applicant's criminal history.

The FBI report dated April 28, 2009, reflects the applicant's criminal history in Massachusetts as follows:

1. On December 24, 2001, the applicant was arrested by the Boston Police Department for operating under the influence of alcohol, a violation of MGL chapter 90, section 24(1)(a)(1).
2. On September 18, 2004, the applicant was arrested by the Boston Police Department for operating under the influence of alcohol, a violation of MGL chapter 90, section 24(1)(a)(1).

On April 29, 2009, a Notice of Intent to Deny was issued which requested the applicant to submit the court dispositions for the above mentioned arrests. The applicant, in response, provided court documentation, which reflects that the applicant was charged with violating MGL chapter 90, section 24(1)(a)(1), and MGL chapter 90, section 24(e), negligent operation of motor vehicle. On April 5, 2002, the applicant was found guilty of violating MGL chapter 90, section 24(e). The

adjudication of guilt was withheld until April 4, 2003. On April 25, 2003, a default warrant was issued. On September 20, 2004, the warrant was recalled. On November 22, 2004, the charge was dismissed. [REDACTED]

The applicant asserts that his arrest on September 18, 2004, did not result in a conviction; it was a default warrant. Because the FBI report does not reflect that the applicant was arrested *under warrant* on September 18, 2004, and the court documentation submitted makes no mention of this date, it cannot be determined whether the arrest on September 18, 2004, is a separate incident or relates to number one above.

The applicant is ineligible for TPS because of his failure to provide the court disposition for his September 18, 2004, arrest necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that on appeal, the applicant submitted court documentation which revealed that on November 14, 2007, the applicant was charged with leaving the scene of property damage, a violation of MGL chapter 90, section 24(c), and unlicensed operation of a motor vehicle, a violation of MGL chapter 90, section 10(a). On March 25, 2008, both charges were dismissed. [REDACTED]

The second issue to be addressed is whether the applicant is eligible for late registration.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

The record reveals that the applicant filed a timely application on May 2, 2001, and he was granted TPS on August 21, 2001. On April 24, 2006,² the director withdrew the applicant's TPS as he failed to submit the court dispositions for his arrests on December 24, 2001, and September 18, 2004. The applicant filed his current application with U.S. Citizenship and Immigration Services (USCIS) on January 1, 2009.

To qualify for late registration, the applicant must provide evidence that during the initial registration period (January 5, 1999 to August 20, 1999) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 USCIS. 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

² The director indicated that the applicant's TPS was revoked on January 12, 2006. The record, however, reflects that on January 24, 2006, the director reopened proceedings on Service motion and reissued the Notice of Intent to Revoke on January 25, 2006.

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

On appeal, the applicant does not address the director's finding regarding the filing of his application for late registration.

Based on the documents contained in the record, the applicant did not have an application or any relief from removal that was pending during the initial registration period. Having an application for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the current application for late registration will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.