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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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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 083 75199]

NOV 26 2007

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 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, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 record reveals that the applicant filed a TPS application during the initial registration period on August 20, 1999, under receipt number SRC 00 003 54433. The Director, Texas Service Center, denied that application on May 13, 2003, because the applicant had been convicted of a felony offense. The applicant appealed the TSC director's decision to the AAO on May 28, 2003. The AAO reviewed the records of the District Court of Harris County, Texas, and found that although the applicant was indicted on October 31, 1996, for "forgery-government instrument," a felony (under Cause No. 736711), the court subsequently authorized the State to prosecute the case as a misdemeanor, and on November 4, 1996, the applicant entered a plea of guilty to the reduced charge of "forgery," a class A misdemeanor. The AAO also noted that on November 4, 1996, the court dismissed the charges for "forgery-government instrument" under Cause No. 736712. Because the applicant was convicted of only one misdemeanor offense, the AAO withdrew the TSC director's decision and sustained the appeal on February 3, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 22, 2004, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application on July 23, 2005, after determining that the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. However, the record reveals that the CSC director's decision was in error. As noted above, the AAO had sustained the applicant's appeal because the applicant's one misdemeanor conviction did not render him ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act.

It is noted, however, that the Federal Bureau of Investigation (FBI) fingerprint results report, dated March 20, 2006, reveals that on January 18, 2006, in Dallas, Texas, the applicant was arrested for "driving with license invalid." Pursuant to Texas Code § 521.457(e), an offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$5000, and confinement in the county jail for a term of not less than 72 hours or more than six months. A conviction of this offense would render the applicant ineligible for TPS based on two misdemeanor convictions; however, the record does not contain the final court disposition of this arrest.

Accordingly, the case will be remanded to the director to accord the applicant an opportunity to submit the final court disposition of his arrest on January 18, 2006. If the director ultimately finds that the applicant is ineligible for TPS, the director shall withdraw the applicant's TPS under a new decision issued to the applicant.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further action consistent with the above.