



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: 12/13/11

[SRC 03 163 54278]

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: 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, Director
Administrative Appeals Office

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

The applicant claims to be 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 denied the application because she found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial, dated December 23, 2003, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before January 26, 2004. The appeal was received at the Texas Service Center on January 28, 2004.

It is noted that the statement and evidence submitted on appeal would not have overcome the finding of the director. The applicant states on appeal that he has been in the United States since November 6, 1997. He submits three Western Union receipts dated in the year 2000, and a receipt notice for the May 21, 2003, Form I-765, Application for Employment Authorization. The applicant does not in any way address the ground for denial specified by the director.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C) of the Act.

The record reveals that on June 26, 1995, the applicant was convicted of selling cocaine. The record also indicates that the applicant was deported from Houston, Texas, to Honduras, on April 28, 1997, after his period of incarceration, apparently for this felony. Further, from the record it appears that the applicant was also previously formally deported in 1995, 1994, 1993, and 1992.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The applicant is inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act due to his drug-related conviction detailed above, and is, therefore, also ineligible for TPS under 8 C.F.R. § 244.3. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under these sections of the Act.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of any felony or two misdemeanors and that he had never been arrested. The applicant also presented another TPS application under A-file number [REDACTED] that was denied by the director and subsequently dismissed on appeal before the AAO on February 18, 2004. On that application as well, the applicant fraudulently indicated that he had never been under immigration proceedings and failed to note his prior arrest(s) and conviction(s). These misrepresentations of material facts in applications for immigration benefits also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

An alien applying for temporary protected status 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 rejected.