



U.S. Citizenship
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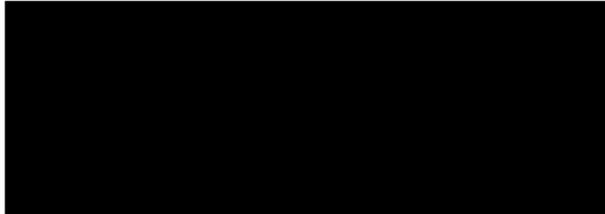
OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 10 2007

[WAC 05 083 76177 as it pertains to WAC 99 229 50923]

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.

Cindy M. Gomez for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the application will be approved. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

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 indicates that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 229 50923. That application was approved on March 16, 2000. A subsequent re-registration application also was approved.

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 director denied the re-registration application because the applicant had failed to submit the final court disposition of his arrest(s).

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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.

The record reveals the following:

- (1) On June 13, 1996, in the Municipal Court of Santa Clarita Courthouse Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 23, 1996), the applicant was indicted for Count 1, driving with suspended license, 14601.1(a) VC, a misdemeanor; and Count 2, driving upon highway exceeding 70 miles per hour, 22356 VC, an infraction. On July 29, 1996, the court ordered the complaint amended by interlineations to add as Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. The applicant was convicted of Count 3. He was placed on probation for a period of 24 months, and ordered to pay \$971 in fines and costs. Counts 1 and 2 were dismissed. Because the applicant violated the terms of his probation, on June 10, 1997, the court revoked the probation and ordered the applicant to serve 8 days in the county jail.
- (2) The Federal Bureau of Investigation fingerprint results report indicates that based on a warrant for the arrest of [REDACTED] the applicant was arrested on December 21, 2004, by the Ontario, California Police Department, and was received by the San Bernardino, California Sheriff's Office on December 22, 2004, for the offense of Count 1, driving without a license; Count 2, driving under the influence of alcohol/drugs with priors, and Count 3, driving with .08 percent blood alcohol level or more.

The applicant, on appeal, asserts that he has been convicted of only one misdemeanor, on June 13, 1996 (No. 1 above), that he did not commit these crimes, and that he has been the victim of mistaken identity. To support his claim, the applicant submits the records of the Municipal Court of San Fernando Courthouse Judicial, County of Los Angeles, California, indicating that [REDACTED] was arrested on May 20, 1991, under Case No. [REDACTED] for the offenses listed in No. (2) above. [REDACTED] failed to appear for his arraignment on June 4, 1991; therefore, a bench warrant was issued. On December 27, 2004, the applicant [emphasis supplied] appeared in court based on this warrant. The court noted that "PERSON IN COURT IS NOT THE DEFENDANT. DL 157 AND JUDICIAL CLEARANCE ISSUED." The court dismissed Counts 1, 2, and 3, and terminated proceedings. The applicant also submits a copy of a Judicial Clearance issued by the Superior Court of the State of California, County of Los Angeles, under warrant number [REDACTED] violation date May 20, 1991, driver's license number [REDACTED] certifying: "The person named above appeared on this warrant in the judicial district indicated above, and was determined not to be the individual for whom the warrant was issued." The applicant asserts that he is the person for whom the Judicial Clearance was issued, "as is evidenced by the fact that my driver's license number is listed on the Judicial Clearance." He submits a copy of California DMV identification card number [REDACTED] issued to [REDACTED], to support his claim.

The record, in this case, indicates that the applicant was convicted of only one misdemeanor offense, detailed in No. (1) above. Based on court documents contained in the record, the applicant was not the person who was arrested and charged for the crimes listed in No. (2) above. As the applicant is not ineligible for TPS based on his one misdemeanor conviction, pursuant to section 244(c)(2)(B)(i) of the Act, the appeal will be sustained and the 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 record, contained in file [REDACTED] indicates that Form I-213, Record of Deportable Alien, was issued on May 11, 1991, indicating that on October 10, 1991, the applicant was apprehended near Calexico, California, subsequent to his entry into the United States without inspection. In removal proceedings held on

September 6, 1991, in Los Angeles, California, the Immigration Judge granted the applicant voluntary departure on or before January 6, 1992. The applicant departed to Mexico from the San Ysidro, California, Port of Entry on January 6, 1992.

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 met this burden.

ORDER: The appeal is sustained.