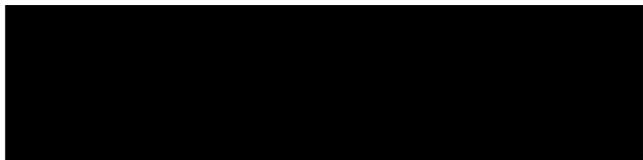


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AUG 03 2007

FILE:



[WAC 01 180 55126]

Office: CALIFORNIA SERVICE CENTER

Date:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied and the TPS status of the applicant was withdrawn by the Director, California Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is citizen and national of El Salvador 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 her initial TPS application on April 11, 2001. The director approved that application on October 10, 2003.

The director withdrew the applicant's TPS status on July 24, 2006, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on her past criminal convictions.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; 63 FR 63593)

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;(emphasis added)

Further, 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).

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record of proceedings contains a Federal Bureau of Investigation report reflecting that the applicant was arrested on June 23, 2004, by the Police Department of Oxnard, California and charged with "001 Counts of Pos/Pur F/Sale Narc/C/Sub."

On January 26, 2006, the director sent a notice of intent to withdraw the applicant's TPS status based on the applicant's past arrest as noted above.

The applicant responded to the notice and submitted the final court dispositions regarding her past arrests. Based on the record of proceedings, the director determined that the applicant had been convicted of two misdemeanor offenses; and therefore, withdrew the applicant's TPS status on July 24, 2006.

On appeal, the applicant admits that she was convicted of Accessory After the Fact, a misdemeanor, on August 11, 2004; and public intoxication, a misdemeanor, on March 9, 2001. The applicant states that she will be applying for the expungement of both convictions, and that she will be eligible for TPS status.

The record of proceedings contains the court dispositions from the Superior Court of California, County of Ventura, California, which reveal that the applicant was convicted of two misdemeanor offenses: "Public Intoxication" (CA 647(f) PC), and "Accessory After The Fact – Knowledge of Crime" (CA 32 PC). Therefore, the director's decision to withdraw the applicant's TPS status will be sustained, and the applicant remains ineligible for TPS.

Furthermore, it is noted that expungements do not relieve the applicant of the consequences of her convictions. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, I.D. 3377 (BIA 1999).

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 dismissed.