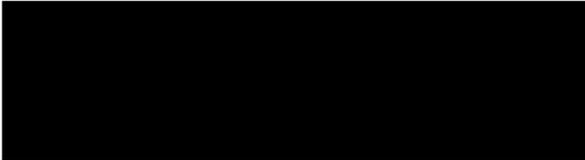


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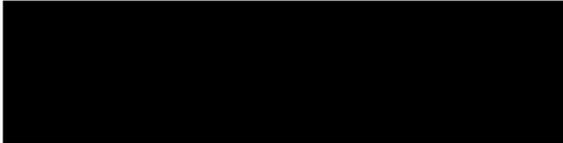
DATE: AUG 31 2007

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:



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DISCUSSION: The applicant's approved Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on July 6, 2000.

The VSC director withdrew the applicant's TPS on November 15, 2006, because the applicant failed to respond to a request to submit evidence of the final disposition related to a criminal arrest for public intoxication. The applicant filed an appeal from that decision on December 18, 2004.

On appeal, counsel claims that the notice was sent to the wrong address. He further asserts that the requested information would not have barred the applicant from eligibility for TPS.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time, if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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 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;

- (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.

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.

The record reveals the following offenses:

- (1) On March 5, 2006, the applicant was arrested for public intoxication by the Perry, Iowa Police Department.

- (2) On June 2, 2005, the applicant was arrested for possession of drug paraphernalia by the Perry, Iowa Police Department.
- (3) On November 23, 2004, the applicant was convicted of forgery, a misdemeanor, by the Iowa District Court for Dallas County.

Although counsel argues on appeal that the notice requesting additional evidence was sent to the wrong address, the record reflects that the notice was mailed to his law office. Furthermore, counsel still failed to provide the final court disposition requested by the director, even after he availed himself of the 90-day additional time that he requested to submit evidence. Instead, he contends that the applicant's arrest for public intoxication should not prevent him from receiving TPS, because the Act requires a conviction of two or more misdemeanors.

Counsel, however, effectively hindered the determination whether the applicant had been convicted of two or more misdemeanors by failing to submit the final court disposition requested. Since the applicant already has one misdemeanor conviction on record, another misdemeanor conviction that could result from the two other arrests would render him ineligible for TPS.

Counsel's unsupported arguments on appeal have failed overcome the grounds for the director's decision. Consequently, the director's decision to withdraw the applicant's TPS will be affirmed.

Since there are no final court dispositions in the record regarding the two arrests listed under Nos. 1 and 2 above, the AAO is unable to render a decision on how they affect his TPS application. The applicant must provide the final court dispositions of these arrests, and any other charges against him, in any future proceedings before CIS.

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.