



U.S. Citizenship
and Immigration
Services

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M

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 31 2007**

[EAC 01 162 50718]

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:

[REDACTED]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen 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 a TPS application during the initial registration period under CIS receipt number EAC 01 162 51261. The applicant filed a subsequent TPS application on February 9, 2005, and indicated he was re-registering. That application was denied for abandonment. The director withdrew the applicant's TPS on July 20, 2004, because the applicant failed to re-register.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 9, 2005, and indicated that he was re-registering for TPS.

The director withdrew the applicant's TPS because the applicant failed to properly re-register pursuant to 8 C.F.R. 244.14(a)(3). The director improperly withdrew the applicant's TPS for failing to re-register pursuant to 8 C.F.R. 244.14(a)(3), when the applicant's TPS should have been withdrawn based on 8 C.F.R. 244.14(a)(1), failing to maintain eligibility. As the AAO reviews decisions on a de novo basis the application will be denied because the applicant is no longer eligible due to two or more misdemeanor convictions in the United States. 8 C.F.R. 244.14(a)(3).

On appeal, counsel for the applicant asserts that the applicant has only been convicted of one misdemeanor.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the 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:
 - (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;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On March 30, 1987, the applicant was arrested by the Yaphank Suffolk County Police Department, New York, for Criminal Impersonation. (Docket # [REDACTED]) The applicant pled guilty to an amended charge of harassment, PL 240.25, on December 14, 1987.
- (2) On May 24, 1987, the applicant was arrested by the Yaphank Suffolk County Police Department, New York, for Assault in the Second Degree and Criminal Mischief (name used [REDACTED]). (Docket # [REDACTED]) It appears that these charges were dismissed on January 18, 1998.
- (3) On November 19, 1989, the applicant was arrested by the Yaphank Suffolk County Police Department, New York, for Driving While Intoxicated (name used [REDACTED]). (Docket # [REDACTED]) It appears this charge was dismissed on July 7, 1998.
- (4) On June 6, 1998, the applicant was arrested by the Yaphank Suffolk County Police Department, New York, for Driving While Intoxicated (name used [REDACTED]). (Docket # [REDACTED]) The applicant was subsequently convicted of this misdemeanor and was placed on probation for a period of three years.

On appeal, counsel for the applicant asserts that the applicant has only been convicted of one misdemeanor.

The applicant submitted a disposition on appeal that appears to address the November 19, 1989, arrest for Driving While Intoxicated detailed in No. 3 above. Inexplicably the date of disposition is nine years after the arrest, but confirms the applicant's use of a false name [REDACTED], and that the charges were dismissed. The director was incorrect in his explanation of the withdrawal in his decision. Nevertheless, court records provided by the applicant and counsel confirm a conviction of Operating a Motor Vehicle with a Alcoholic

Blood Content of 10 of 1 percent (under the name [REDACTED] as detailed at No. 4 above. This is in addition to the applicant's conviction of Harassment in the Suffolk County, NY, on December 14, 1987, as detailed at No. 1 above. In addition, the applicant failed to ever reveal any of his criminal convictions on any of his filed Form I-821s, and for this additional reason is inadmissible.

The applicant is ineligible for TPS due to conviction of at least two misdemeanors detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS will be affirmed.

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.