



U.S. Citizenship
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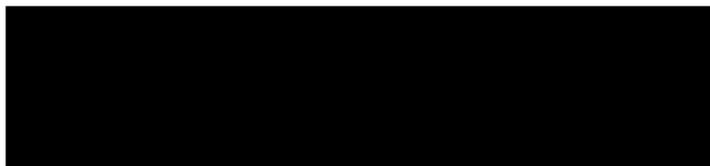
FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 28 2007

[WAC 01 244 55360]
[WAC 05 147 74739]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 5, 2002. The director subsequently withdrew the applicant's TPS status on June 27, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) dated January 30, 2006, requesting that he submit the final court dispositions of all of his arrests. Within the same decision, the director denied the applicant's re-registration application, filed on February 24, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 147 74739, because the applicant had abandoned his re-registration application based on his failure to provide the final court dispositions of any and all criminal arrests/convictions.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant contends that the director's decision was made in error because he clearly recalled responding and complying with the request for evidence. He submits additional evidence.

A review of the record indicates that the applicant did respond to the director's ITW. He submitted copies of records of his arrests and which were received by the California Service Center on February 23, 2006, prior to the director's withdrawal of the applicant's TPS on June 27, 2006.

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. 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.

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:

1. The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on December 31, 2002, in Concord, California, the applicant was arrested for "burglary." The applicant subsequently submitted a copy of the Concord Police Department Offense Report, under Case No. [REDACTED] indicating that the applicant was arrested and charged with "burglary-commercial" in violation of California Penal Code (PC) § 459/460(b), a misdemeanor. He also submitted: (1) a letter from the Concord Police Department dated July 27, 2005, indicating that their records reveal a disposition of this case, "Decision Not to Issue-Statute of Limitations;" and (2) a copy of a form "JUS 8715 Decision Not to Issue Complaint (DNI)" based on "Statute of Limitations," signed by the Deputy District Attorney on February 6, 2004.
2. The FBI report indicates that on January 12, 2003, in Concord, California, the applicant was arrested for "burglary." The applicant subsequently submitted a copy of the Concord Police Department Offense Report, under Case No. [REDACTED] indicating that the applicant was arrested and charged with "shoplifting" in violation of PC § 459, a misdemeanor. He also submitted a letter from the Concord Police Department dated July 27, 2005, indicating that their records reveal a disposition of this case, "Decision Not to Issue-Statute of Limitations." The letter from the police department, alone, cannot be accepted as the final disposition of this arrest. The applicant neither submitted a statement from the District or State Attorney nor submitted the final court disposition of this arrest from the court where the case was heard, as requested by the director in his ITW.
3. The FBI report indicates that on January 2, 2005, in Las Vegas, Nevada, the applicant was arrested for Conspiracy to Violate Uniform Controlled Substance Act. The applicant subsequently submitted an uncertified copy of a computer printout of a "Case Summary with Events" from an unknown source indicating that on January 5, 2005, the applicant (name used: [REDACTED]) was charged with Count 1, Possession of Controlled Substance with Intent to Sell, in violation of Nevada Revised Statute (NRS) §453.337, a felony; and Count 2, Possession of Drug Paraphernalia, in violation of NRS § 453.566, a misdemeanor (under Case No. [REDACTED]). The uncertified printout also indicates that on January 5, 2005, the applicant entered a plea of guilty to Count 2, and that Count 1 was dismissed. However, the applicant also submitted a letter from the Deputy Public Defender, Clark County, Nevada, dated July 25, 2006, stating that the Office of the Public Defender represented the applicant in this case; that "the charge was originally filed as a felony, but was reduced to a misdemeanor charge to Possession of a Dangerous Substance not to be introduced into Interstate Commerce;" that on January 5, 2005, in Justice Court #9, the applicant pled guilty to the misdemeanor charge; that the sentence was to do 40 hours of community service, low level drug counseling class, with a 60-day suspended jail sentence; that the applicant completed everything and the case was closed on July 22, 2005; that he (the Deputy Public Defender) made copies of the

court's minutes and they are not clear about the case being closed; and that he "filed the motion to close and it was so ordered by the court."

The applicant is ineligible for TPS because he failed to provide the final court disposition of his arrest listed in No. 2 above, and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related conviction (No. 3 above). Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act.

Consequently, the director's decision to withdraw the applicant's TPS and to deny the re-registration application 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.