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U.S. Citizenship
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FILE:

[REDACTED]
[WAC 99 129 52770]
[WAC 05 099 71165]

OFFICE: California Service Center

DATE:

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:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied his re-registration application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 director denied the re-registration application on the ground of abandonment and withdrew the applicant's previously approved TPS on the ground that the applicant had not submitted evidence of the final court dispositions of two arrests.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. *See* 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant submits the final court dispositions of two arrests in Los Angeles County, on each of which he was convicted of a misdemeanor.

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.
8 C.F.R. § 244.1.

The record reveals that the applicant, who was initially granted TPS on March 24, 2000 pursuant to an application filed in April 1999 [WAC 99 129 52770], filed the current application for re-registration or renewal of TPS in January 2005. On January 19, 2006, the director issued a Notice of Intent to Withdraw (NOIW) the applicant’s TPS on the basis of CIS (Citizenship and Immigration Services) records indicating that the applicant had been arrested twice by the Los Angeles Police Department – the first time on March 22, 2004, on a charge of DUI (driving under the influence of alcohol/drugs), and the second time on October 8, 2004, on charges of manufacturing/selling a counterfeit mark and “false crime, to Spec PO S.” The applicant was requested to submit evidence of the final court disposition(s) of these and all other arrests within 30 days.

After the applicant failed to respond to the NOIW, the director issued a Notice of Withdrawal of TPS, combined with a Notice of Decision to Deny TPS Re-Registration, on May 5, 2006. The director withdrew the applicant’s formerly granted TPS for failure to comply with the NOIW which specified the re-registration requirements for TPS, citing the regulations at 8 C.F.R. § 244.14(a)(3) and 8 C.F.R. § 244.17(c). The director also denied the re-registration application because the underlying TPS had been withdrawn, thereby removing the legal basis to approve a re-registration application, and the applicant’s failure to respond to the NOIW constituted an abandonment of the application under 8 C.F.R. § 244.9(c).

On appeal the applicant acknowledges that he committed two misdemeanors which resulted in a total jail time of 30 days. With his appeal the applicant submits the final court dispositions of two arrests in Los Angeles County. The first arrest, on March 22, 2004, led to a misdemeanor conviction on May 13, 2004, of driving under the influence (DUI) with a blood alcohol weight of 0.08% or more, for which the applicant received a sentence of three years summary probation. The second arrest, on May 14, 2004, led to a misdemeanor conviction on July 20, 2004, of reporting a crime fraudulently, for which the applicant received a sentence of three years summary probation and, later, 30 days in jail.

Thus, the court records submitted on appeal show that the applicant was convicted of a misdemeanor, as defined in 8 C.F.R. § 244.1, after each of the arrests on March 22, 2004 and May 13, 2004. Since the record establishes that the applicant has been convicted of two misdemeanors committed in the United States, he is ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Accordingly, the director's decision to withdraw approval of the applicant's TPS will be affirmed. Furthermore, the director's decision to deny the application for re-registration or renewal of temporary treatment benefits, based on the withdrawal of his TPS approval, is also affirmed.

The AAO notes that no final court disposition has been submitted for the applicant's other arrest in CIS records, on October 8, 2004, on the charges of manufacturing/selling a counterfeit mark and "false crime, to Spec PO S." In any future proceedings before CIS the applicant must submit evidence of the final court disposition of these charges, and any other charges against him.

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.