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U.S. Citizenship
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JAN 17 2007

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 209 77127]
[WAC 01 159 50978]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record indicates that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 159 50978. That application was approved on March 29, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 27, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on September 17, 2005, because the applicant had failed to submit the certified court dispositions of his arrests on April 22, 2002, and December 13, 2002.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on June 15, 2005, to submit the final court dispositions of his arrests listed on the FBI report. In response, the applicant submits a copy of a "Notice of Completion Certificate." The director determined that the applicant had failed to submit the requested court disposition and denied the application on September 17, 2005.

On appeal, the applicant submits the court documents relating to the following:

- (1) On May 21, 2002, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] (arrest date April 21, 2002), the applicant was indicted for Count 1, driving under the influence of alcohol and/or drugs, 23152(a) VC, a misdemeanor; Count 2, driving under the influence (with .08 percent blood alcohol level or more), 23152(b) VC, a misdemeanor; Count 3, hit and run-property, 20002(a) VC, a misdemeanor; and Count 4, driving while unlicensed, 12500(a) VC, a misdemeanor. On July 1, 2002, the court added Count 5, failure to appear, 40508(a) VC, a misdemeanor. On December 16, 2002, the applicant entered a plea of guilty to all 5 counts. He was placed on probation for a period of 3 years, ordered to attend and complete a 9-month Level 2 First Offender Alcohol Program, and his driver's license was suspended for 12 months as to Count 1. He was placed on probation for a period of 3 years, ordered to serve 20 days in the county jail, and to make restitution as to Count 3. The court "stays sentence pursuant to Penal Code 654" as to Count 2. Sentence was suspended as to Counts 4 and 5.

The applicant was convicted of at least two misdemeanors; therefore, he is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the applicant's temporary protected status will be withdrawn.

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.