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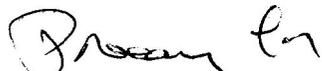
IN RE: Applicant: [REDACTED]

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DISCUSSION: The re-registration application was denied and the applicant's Temporary Protected Status was withdrawn by the Director, California Service Center.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

The applicant claims to be a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on July 9, 1999.

On January 3, 2005, the applicant filed a Form I-821, Application for Temporary Protected Status, and indicated that he was applying for re-registration.

On June 27, 2005, the director denied the current re-registration application and withdrew the applicant's Temporary Protected Status because he found that the applicant had been convicted of two misdemeanor offenses.

On appeal, the applicant submits a statement and additional evidence.

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.

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. 8 C.F.R. § 244.14(a)(1).

The record reveals that the applicant was arrested in Los Angeles, California, on June 17, 2000, and charged with inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor. On July 20, 2000, the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, State of California, amended the complaint by interlineation to add one count of battery in violation of section 242 PC, a misdemeanor, and one count of public intoxication in violation of section 647(f) PC, a misdemeanor. The court dismissed Count (1), inflicting corporal injury on a spouse or cohabitant, and the applicant pled *nolo contendere* (no contest) to counts (2) and (3), battery and public intoxication, both misdemeanors.

The director denied the re-registration application and withdraw the applicant's Temporary Protected Status on June 27, 2005, because he found that the applicant is ineligible for TPS due to his record of two or more misdemeanor convictions.

The applicant asserts on appeal that since his two misdemeanor convictions arose in a single occasion they should be considered a single misdemeanor offense.

The applicant's assertion cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled *nolo contendere* to two separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses for immigration purposes.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, 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 deny the re-registration application and withdraw the applicant's Temporary Protected Status for this reason will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

It is noted that the applicant filed an asylum application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 23, 1993. On February 14, 1996, the asylum application was denied and the applicant was referred for a removal hearing before an Immigration Judge. On October 4, 1996, the applicant filed a Form EOIR-40, Application for Suspension of Deportation. On April 25, 1997, an Immigration Judge in Los Angeles, California, denied the applications for asylum and for suspension of deportation and granted the applicant the privilege of voluntary departure from the United States to Honduras on or before May 27, 1997, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure. The Board of Immigration Appeals (BIA) subsequently dismissed the applicant's appeal from the judge's order on November 6, 1998, and the record contains an outstanding warrant of removal issued by the District Director, Los Angeles, on December 7, 1998.

The application will be denied, and the applicant's TPS will be withdrawn, for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.