



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 18 2007
[SRC 01 192 57776]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on January 17, 2003. The director subsequently withdrew the applicant's Temporary Protected Status on March 8, 2006, when it was determined that the applicant had failed to successfully re-register.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if 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 Protective Status. 8 C.F.R. § 244.14(a)(3). Although the director erroneously withdrew TPS under § 244.14(a)(3), the AAO is dismissing the appeal because TPS should have been withdrawn under § 244.14(a)(1) due to the applicant's criminal record.

8 C.F.R. § 244.14(a)(1) states in part:

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.

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.

On appeal, the applicant reasserts his eligibility for TPS and submits final court dispositions stemming from his 1997 and 2004 arrests.

The record reveals the following offenses:

- On September 3, 1999, the applicant was convicted of driving under the influence, a misdemeanor offense in violation of Georgia Code 40-6-391, in Dawson County, Georgia (Docket # [REDACTED])
- On March 23, 2004, the applicant was convicted of driving under the influence, a misdemeanor offense in violation of Georgia Code 40-6-391, in Conyers, Georgia (Docket # [REDACTED])

The applicant is ineligible for TPS due to his record of two misdemeanor convictions as 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 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 from the withdrawal of Temporary Protected Status is dismissed.