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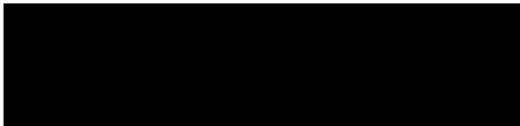
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OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 06 2007

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 applicant was granted Temporary Protected Status. The current application for re-registration was denied by the Director, California Service Center. The application 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 and is seeking to maintain 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 because he found that the applicant had been convicted of two felonies.

On appeal, the applicant asserts her eligibility for TPS.

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 record reveals the following offenses:

- On April 23, 1999, the applicant was convicted of two felony counts of child abuse and neglect in the Circuit Court of the Eleventh Judicial Court in Dade County, Florida in violation of Criminal Code section F3/827.03(3)(c).

On appeal, the applicant stated that she had submitted final court dispositions pertaining to her arrests and convictions before being granted TPS status by the Texas Service Center, on three separate occasions. The applicant further stated that had the dispositions from her arrests rendered her ineligible for TPS, the Service Center would have found her ineligible for any further TPS approvals. The applicant concluded that her circumstances have not changed since being approved for TPS in 2003; and therefore, she continues to be eligible for TPS.

If the TPS application and re-registrations were approved based on the same evidence that is contained in the current record of proceeding, the approval would constitute clear and gross error on the part of the director. Citizenship and Immigration Services (CIS) is not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). In the instant case, the records show that the applicant was arrested on March 19, 1999, and charged with two felony counts of child neglect in violation of Criminal Code section F3/827.03(3)(c). The record also shows that the applicant was found guilty of two counts of felony child neglect on April 9, 1999, and sentenced to one-year probation and to pay a fine.

The applicant is clearly not eligible for TPS based on her two felony convictions. Section 244(c)(2)(B)(i) INA and 8 CFR 244.4(a). Therefore, the director's decision to deny the re-registration application will be affirmed.

TPS may be withdrawn any time it is discovered 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). If a decision to withdraw TPS is entered by the AAO, the AAO shall notify the alien of the decision and the right to a de novo determination of eligibility for TPS in deportation or exclusion proceedings, if the alien is then deportable or excludable. 8 C.F.R. § 244.14(c). In this case, the record clearly establishes that the applicant was convicted of two felony counts of child neglect. This criminal record renders the applicant ineligible for TPS therefore, the initial application is sua sponte reopened and such status is hereby 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 and the applicant's Temporary Protected Status is withdrawn.