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FILE:



[WAC 04 009 52564]
[WAC 05 225 93560]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 07 2007

IN RE:

Applicant:



APPLICATION:

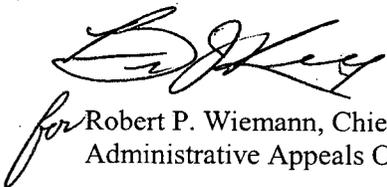
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 12, 2004. The director subsequently withdrew the applicant's TPS status on March 2, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) requesting that he submit the final court dispositions of all of his arrests. Within the same decision, the director denied the applicant's re-registration application, filed on May 13, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 225 93560, because the applicant had abandoned his re-registration application based on his failure to respond to the ITW.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant submits a statement and court dispositions relating to his arrests.

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. 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:

- (1) On May 15, 2000, in the Los Angeles Municipal Court, San Fernando, California, Case No. [REDACTED] ("issue date" March 3, 1998), the applicant was convicted of Count 1, violation of promise to appear, [REDACTED] VC, a misdemeanor; Count 2, seat belt violation, 27315(d) VC, an infraction; and Count 3, proof of financial responsibility, 16028(a) VC, an infraction. He was assessed \$250.

- (2) On May 15, 2000, in the Los Angeles Municipal Court, San Fernando, California, Case No. [REDACTED] ("issue date" May 16, 1998), the applicant was convicted of Count 1, violation of promise to appear, 40508(a) VC, a misdemeanor; Count 2, seat belt violation, 27315(d) VC, an infraction; and Count 3, "APLIC FOR NMBR CERTS," 4000AX, an infraction. He was assessed \$250.
- (3) On May 30, 2000, in the Los Angeles Municipal Court, San Fernando, California, Case No. 3834960 ("issue date" October 22, 1998), the applicant was convicted of Count 1, "violation of promise to appear," 40508(a) VC, a misdemeanor; Count 2, "APLIC FOR NMBR CERTS," 4000AX, an infraction; and Count 3, driving while privilege suspended, 14601 VC, a misdemeanor. He was sentenced to 32 hours in jail, and assessed \$250.
- (4) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on May 14, 2000, in Los Angeles, California, the applicant was arrested for Count 1, failure to appear, written promise; Count 2, failure to pay fine-vehicle operation; and Count 3, failure to appear, written promise. It is not clear in the record whether this arrest relates to Nos. 1, 2, and 3 above.
- (5) The FBI report indicates that on June 17, 2001, in Los Angeles, California, the applicant was arrested for "FAILURE TO PAY FINE VEH OPR." The final court disposition of this arrest is not contained in the record, nor is it clear whether this arrest relates to No. 6 below.
- (6) The FBI report indicates that on June 18, 2001, in Burbank, California, the applicant was arrested for "FAILURE TO PAY FINE VEH OPR." The final court disposition of this arrest is not contained in the record, nor is it clear whether this arrest relates to No. 5 above.

On appeal, the applicant states that he was detained "on two separate occasions, not three as INS has stated previously. Once on May 14th, 2000 and once on June 17th, 2001 and later transferred by the LAPD to Burbank on June 18th, 2001." He asserts that on both occasions he was only detained, and that the arrests did not end up with jail time. He further asserts that he was not arrested for any criminal violations, only for failure to appear due to minor traffic tickets. The applicant also submits: (1) a letter from the Superior Court of California, County of Los Angeles, dated March 24, 2004, indicating that "the case against this defendant has been closed for time served." The letter does not contain the name of the applicant, the arrest information, such as, the date and place of arrest and offense, the case number, or other pertinent information; (2) A letter from the Superior Court, San Fernando Branch, dated March 30, 2006, indicating that "all misdemeanor records are destroyed pursuant to Statute. Court does not track 'detainments only' by the police department."

The applicant also asserts that he has since set up a payment program to pay all outstanding violations and court fines, he has served his time with the courts and has tried to move on without having "these petty offenses lurking over me." However, pursuant to section 40508(a) of the California Vehicle Code, any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

Accordingly, the applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, detailed in Nos. 1, 2, and 3 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 applicant's TPS will be affirmed.

It is noted on the FBI report that the applicant had indicated that he was born in Estonia, and that he is a citizen of Estonia. The applicant is required to meet the eligibility requirements that he is a national of a

designated foreign state pursuant to section 244(c) of the Act. The country of Estonia is not a foreign state designated under section 244 of the Act.

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.