



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 10 2007

[WAC 05 196 74497]

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied and the TPS status of the applicant was withdrawn by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a citizen and national 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 reveals that the applicant filed his initial TPS application on June 8, 2001. The Director, Texas Service Center, approved that application on October 20, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 14, 2005, and indicated that he was re-registering for TPS.

The director withdrew the applicant's TPS status on February 28, 2006, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his past criminal conviction.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. 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: (Amended 11/16/98; 63 FR 63593)

(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;(emphasis added)

Further, 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).

The record of proceedings contains a Federal Bureau of Investigation report reflecting that the applicant was arrested for "Evading Arrest/Detention with Vehicle 38.04 PC FS."

On September November 21, 2005, the director sent a notice of intent to withdraw the applicant's TPS status requesting the final court disposition of the above noted arrest.

The applicant responded to the notice and submitted additional evidence and the final court disposition regarding his past arrest. Based on the record of proceedings, the director determined that the applicant had been convicted of a felony; and therefore, withdrew the applicant's TPS status on February 28, 2006.

On appeal, counsel states that the applicant was not convicted of a felony; however, received a deferred adjudication of guilt and three years probation.

Pursuant to Section 101(a) of the Act:

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

A review of the court disposition from the Harris County District Court in Houston, Texas, reveals that the applicant pled guilty to "Evading Arrest with Motor Vehicle", Texas State Section 38.04, a felony. The applicant was placed on probation for 3 years and was order to make restitution in the amount of \$1500 to the victim.

Therefore, the director's decision to withdraw the applicant's TPS status will be sustained, and the applicant remains ineligible for TPS.

It is also noted that the applicant was ordered deported from the United States by an Immigration Judge at Houston, Texas on November 2, 2000, and that order remains outstanding.

The application will be denied 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.