



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 16 2007
[SRC 99 180 50740]
[WAC 05 111 81294]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant claims to be a native and citizen of Honduras 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 18, 2000. The director subsequently withdrew the applicant's TPS status on September 14, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) dated July 24, 2006, requesting that he submit the final court dispositions of all of his arrests, including arrests listed in the Federal Bureau of Investigation (FBI) fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on March 14, 2006, under Citizenship and Immigration Services (CIS) receipt number WAC 05 111 81294, based on the applicant's failure to provide the final court dispositions of all of his arrests.

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).

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on September 14, 2006. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. Although the applicant dated the appeal October 10, 2006, it was postmarked October 23, 2006, and received by the director on October 25, 2006, 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

It is noted that the applicant, on appeal, submits the requested court dispositions of his arrests:

1. On July 8, 2004, in Marion County Court, Indianapolis, Indiana, Case No. [REDACTED] the applicant was indicted for Count 1, operating a vehicle while intoxicated/MA; Count 2, operating a vehicle with blood alcohol level greater than 0.15%, Sch. I, II/MA; and Count 3,

public intoxication/MB. On June 22, 2005, the applicant was convicted of Count 1. Imposition of the applicant's sentence to 365 days in the county jail was suspended with one day credit for time served, he was ordered to pay \$186.50 in fines and costs, and his driver's license was suspended for 30 days to run concurrent with Cause No. [REDACTED] (it is not clear if this Cause number relates to No. 2 below). Counts 2 and 3 were dismissed.

2. On May 15, 2005, in Marion County Court, Indianapolis, Indiana, Case No. [REDACTED] 081058, the applicant was indicted for Count 1, operating a vehicle while intoxicated/MA; Count 2, operating a vehicle with blood alcohol level greater than 0.15%, Sch. I, II/MA; and Count 3, public intoxication/MB. On June 22, 2005, the applicant was convicted of Count 1. Imposition of the applicant's sentence to 365 days in the county jail was suspended with one day credit for time served, and he was placed on probation for a period of 361 days to run concurrent with Cause No. [REDACTED] (No. 1 above), he was ordered to pay \$211.50 in fines and costs, and his driver's license was suspended for 30 days. Counts 2 and 3 were dismissed.

The applicant has not overcome the grounds of the director's decision to withdraw TPS. The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above. Consequently, the director's decision to withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

It is further noted that the FBI report indicates that the applicant was born in Mexico. 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 Mexico is not a foreign state designated under section 244 of the Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.