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U.S. Citizenship
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 29 2007

[WAC 99 106 51326]

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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on October 1, 2005, because the applicant had failed to submit requested court documentation relating to his criminal record.

The record, however, shows that the applicant, a native and citizen of Honduras, was granted TPS on February 10, 2000. The director, therefore, should have withdrawn the applicant's TPS status rather than to deny the application.

Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), 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. Accordingly, the decision of the director to deny the initial TPS application will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected 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. 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 Federal Bureau of Investigation fingerprint results report reveals the following offenses:

- (1) On April 25, 1998, in [REDACTED] California, the applicant, under the name of [REDACTED] was arrested and charged with battery on a spouse, ex-spouse, date, etc. [PC 243(e)(1)]. In response to the director's February 18, 2005 request for additional evidence, and on appeal, the applicant furnished copies of police records, Disposition of Arrest and Court Action, and a statement from the Los Angeles County District Attorney's Office, indicating that prosecution was rejected on May 7, 1998.
- (2) On November 14, 2004, in Norwalk, California, the applicant was arrested for inflicting corporal injury to a spouse/cohabitant, under PC 273.5(a). In response to the director's February 18, 2005 request for additional evidence, and on appeal, the applicant furnished a statement from the Los Angeles County District Attorney's Office, dated March 10, 2005, indicating that prosecution was

declined on November 23, 2004, and a second statement from the Los Angeles County District Attorney's Office, dated October 18, 2005, indicating that the case was rejected on November 13, 2004.

The record, in this case, shows that the applicant was not convicted of the charges listed in Nos. 1 and 2 above, and is not ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. Therefore, the director's decision will be withdrawn, and the appeal will be sustained.

An alien applying for TPS 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 met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.