



U.S. Citizenship  
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Services

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OCT 02 2007

FILE:

Office: VERMONT SERVICE CENTER

Date:

[SRC 99 207 53304]

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 Honduras who was granted TPS on September 10, 2003. The director subsequently withdrew the applicant's status and denied the re-registration application on February 22, 2007, when it was determined that the applicant had been convicted of the possession of a dangerous drug, and therefore, was inadmissible under Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act.

On appeal, counsel submits documentation including a Certificate of Disposition from the Harris County District for consideration. Counsel argues:

Regarding the reasons for the appeal, the criminal disposition that this office now holds not indicate that the conviction for a drug offense is for a substance listed within § 102 of the Controlled Substance Act, 21 USC 802). Therefore, the applicant is not inadmissible as per 212(a)(A)(i)(II) and the applicant's status should be reinstated.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

*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.

An applicant is ineligible for TPS due to a felony conviction and for being convicted of a crime relating to a controlled substance. Sections 244.3(c)(1) and 212(a)(2)(A)(i)(II) of the Act, and 8 C.F.R. § 244.4(a).

The record reflects the following offenses:

- (1) On January 21, 1999, the applicant was arrested for delivering or offering to deliver a dangerous drug. On February 25, 1999, the applicant entered into a plea bargain and pled guilty and was convicted by a Judge of the County Criminal Court of Harris County, Texas, to a lesser charge of possession of a dangerous drug, a misdemeanor. (Cause No. [REDACTED]). She was sentenced to 20 days confinement and fined \$500.

On appeal, counsel argues the applicant was not convicted for possessing a substance that would disqualify her for TPS. Counsel submits no evidence to support this assertion. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

Absent evidence to the contrary, the applicant is ineligible for TPS for having being convicted of a crime relating to a controlled substance. Sections 244.3(c)(1) and 212(a)(2)(A)(i)(II) of the Act. Consequently, the director's decision to withdraw TPS and deny the re-registration application is affirmed.

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.