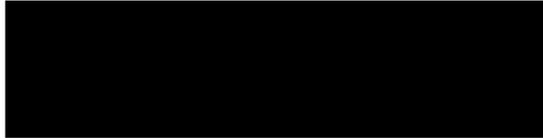


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Services

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OCT 24 2007

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 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 June 28, 2000. The director subsequently withdrew the applicant's TPS status on May 8, 2007, when it was determined that the applicant had failed to submit the final court dispositions of all of her arrests as had been requested in the Notice of Intent to Withdraw (ITW) dated February 9, 2007. Within the same decision, the director denied the applicant's re-registration application, filed on July 2, 2007, under Citizenship and Immigration Services (CIS) receipt number EAC 07 286 70108, because the applicant's failure to adequately respond to the ITW constitute both a failure to re-register for TPS and an abandonment of her re-registration application.

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 resubmits court dispositions relating to her 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:

- (1) On April 8, 2005, in Georgia, the applicant was arrested for Count 1, driving with an unlawful alcohol content, a misdemeanor; Count 2, driving under the influence of alcohol, a misdemeanor; Count 3, reckless driving, a misdemeanor; Count 4, failure to maintain lane, an infraction; and Count 5, no license, a misdemeanor. On September 5, 2005, in the State Court of Cobb County, Georgia, Case No. [REDACTED] the applicant was convicted of Count 2. She was sentenced to confinement in the county jail for a period of 13 months; however, the court further ordered that

upon service of 24 hours of the sentence, the remainder of 11 months 29 days may be served on probation. The applicant was also ordered to pay a fine in the amount of \$400, and provide 40 hours of community service. Counts 1, 3 and 4 were merged, and a *nolle prosequi* was entered as to Count 5.

(2) On March 24, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date January 16, 2001), the applicant was indicted for Count 1, failure to stop at a stop sign, 22450(a) VC, an infraction; Count 2, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 3, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a) VC, an infraction. On March 9, 2007, the applicant was convicted of Count 3. Imposition of sentence was suspended and the applicant was placed on probation for a period of 36 months, and ordered to pay \$1,174 in fines and costs. Counts 1, 2, and 4 were dismissed.

(3) The Federal Bureau of Investigation fingerprint results report and Form I-213, Record of Deportable/Inadmissible Alien, contained in the record of proceeding, indicate that on October 3, 1998, at the San Ysidro Port of Entry, California, the applicant applied for admission into the United States from Mexico by claiming to be a United States citizen. During a secondary inspection, the applicant admitted her true identity and nationality, that she is a citizen and national of Honduras and she was not in possession of proper documentation to either enter into, pass through, or remain in the United States. The applicant was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act¹ and section 212(a)(7)(A)(i)(I) of the Act,² and an order of removal from the United States (Form I-860) was issued. While travel arrangements for her departure were pending, airline flights to Central America were suspended as a result of a devastating hurricane; therefore, on December 8, 1998, in San Diego, California, the applicant was paroled into the United States until March 8, 1999, and the applicant was released under an Order of Supervision (Form I-220B).

On appeal, the applicant asserts that 8 C.F.R. § 244.1(1)(2) clearly defines a misdemeanor as "any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor." She further asserts that because she was never sentenced to a jail term, her two misdemeanor offenses shall not constitute a reason for denial of her TPS.

The applicant's assertions on appeal are without merit. The fact that the applicant did not serve time in jail, but rather was placed on probation, is not evidence that the applicant's convictions are not misdemeanors. According to Georgia Code § 40-6-391 [driving under the influence of alcohol, drugs, or other intoxicating substances] (No. 1 above), every person convicted of violating this code shall be guilty of a misdemeanor, and is punishable by imprisonment of not less than 10 days nor more than 12 months. Additionally, a conviction of California Vehicle Code § 23152(b) (No. 2 above), is a misdemeanor and is punishable by imprisonment of up to 6 months. 8 C.F.R. § 244.1 defines "misdemeanor" to mean a crime committed in the United States punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any**. Therefore, the applicant has been convicted of two misdemeanor offenses.

¹ Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose of benefit under the Act or any other Federal or State law is inadmissible.

² Any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under section 211(a), is inadmissible

Accordingly, the applicant is ineligible for TPS due to her two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act for falsely representing herself as a United States citizen. Consequently, the director's decision to withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

It is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.