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U.S. Citizenship
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Services

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FILE:

Office: California Service Center

Date: OCT 26 2007

[WAC 05 106 75879 as it relates to WAC 99 113 50583]

IN RE:

Applicant:

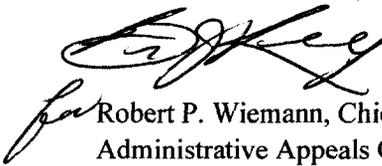
APPLICATION:

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 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn; and the applicant's re-registration application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras 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 an initial TPS application on February 3, 1999, under CIS receipt number WAC 99 113 50583. The California Service Center Director approved that application on February 2, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 14, 2005, under CIS receipt number WAC 05 106 75879, and indicated that he was re-registering for TPS. The California Service Center Director simultaneously withdrew the applicant's TPS and denied the re-registration application, on July 18, 2006, as the record of proceedings established that the applicant failed to submit final court dispositions for two arrests on February 1, 1998, and on April 9, 2004, respectively, as requested by the director in an April 25, 2006, notice of intent to withdraw.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The regulations under 8 C.F.R. § 244.14(a)(1) and (3) further state that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

On appeal, counsel states the applicant's prior counsel failed to effectively represent the applicant by failing to submit the requested court dispositions. Counsel submits the court disposition for the two arrests. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

The court disposition records, however, clearly shows that the applicant has two misdemeanor convictions. Specifically, the record reveals that:

- 1) On May 14, 1998, the Hawaii District Court of the Second Circuit, Hawaii, convicted the applicant, on a negotiated plea agreement, of "DRIVING UNDER INFL OF INTOX LIQ," a misdemeanor; The court imposed fines and restrictions; and,
- 2) On June 9, 2004, the Hawaii District Court of the Second Circuit, Hawaii, convicted the applicant, on a guilty plea, of "DRIVING UNDER INFL OF INTOX LIQ," a misdemeanor. The court imposed fines and restrictions.

Section 244(c) of the Act, and the related regulations in 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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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 two misdemeanor convictions for the applicant. Therefore, the applicant is ineligible for TPS due to his record of two misdemeanors, detailed above, and he is not eligible to re-register for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS, and deny the re-registration application, will be affirmed.

It is noted that the record of proceedings reveals that the applicant was placed in removal proceedings, and on November 3, 1998, an Immigration Judge granted the applicant voluntary departure in lieu of Removal on/or before March 3, 1999, with an alternate Order of Removal to Honduras, if the applicant failed to depart the United States as required. The record does not reflect that the applicant departed the United States as required.

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.