



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

OCT 30 2007

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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador 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 May 25, 2001, under CIS receipt number WAC 01 239 55619. The director approved that application on January 21, 2004. The director subsequently, on February 1, 2007, withdrew the applicant's temporary protected status pursuant to 8 C.F.R. § 244.14(a)(3), 8 C.F.R. § 244.17(c).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 27, 2005, under CIS receipt number WAC 05 209 70165, and indicated that he was re-registering for TPS. The director denied that application on October 5, 2001, because the applicant had been convicted of two misdemeanors. The record reveals that the applicant filed an untimely appeal on November 10, 2005, which was rejected by the director on January 4, 2006.

The applicant now files this appeal. On the Form 290-B, filed on February 2007, the applicant states that he is appealing the decision dated "Oct. 2005." This appeal, however, relates to the director's withdrawal decision, dated February 1, 2007.

As noted by the director in his withdrawal notice, the record reveals the following:

1. On October 2, 2001, the Superior Court of California, County of Alameda, convicted the applicant on a guilty plea of a violation of Section 23152(a) VC, a misdemeanor. The court imposed a conditional sentence of three years probation.
2. On June 3, 2004, the Superior Court of California, County of San Mateo, convicted the applicant on a nolo contendere plea of a violation of Section 23152(B) VC, a misdemeanor. The court imposed a conditional sentence of 40 days jail, three years probation, plus fines and costs.

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, the applicant asks for forgiveness and for another chance. With his appeal, the applicant submits a photocopy of a State of California Certificate of Live Birth, for his son, issued on October 6, 1998.

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. See 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.

As noted above, with his appeal, the applicant submitted a final court disposition that reveals that he was convicted of two misdemeanor charges.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 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 must be affirmed for this reason.

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.