



U.S. Citizenship
and Immigration
Services

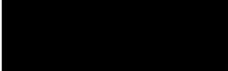
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FILE:



Office: California Service Center

Date: SEP 04 2007

[WAC 05 210 86965 as it relates to WAC 03 018 54447]

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DISCUSSION: The applicant's temporary protected status was withdrawn and an application for re-registration was denied by the Director, California Service Center.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 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 July 22, 2002, under CIS receipt number WAC 03 018 54447. The director approved that application on December 1, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, under CIS receipt number WAC 05 210 86965, 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 May 31, 2006, because the applicant has two criminal convictions. The director noted that: 1) On July 28, 2005, the applicant was convicted of "Possession of Narcotics / Control Substance" in VIOLATION OF 11350 (A) H&S Code; and, 2) On July 2, 2004, the applicant was convicted of "Driving Under the Influence of Alcohol with Blood Level of 0.08 or More," in violation of California Vehicle Code 23152(b).

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 states 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".

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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.

Final court dispositions in the record of proceedings confirm the convictions (described above).

On appeal, the applicant asserts eligibility for TPS, and states that the court deferred adjudication of guilt in connection with the charges listed in Number 1, above, on July 28, 2005, and therefore, he was not convicted of the offense. The court disposition records, however, confirm that the applicant pled guilty to the narcotics charge, a felony.

Furthermore, Section 101(a)(48) of the Act, states in pertinent part:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
 - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
- (B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The court record clearly shows that the applicant was convicted of a felony and one misdemeanor, described above. The applicant is ineligible for TPS due to his record of at least one felony conviction, 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 deny the application must also 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.