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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



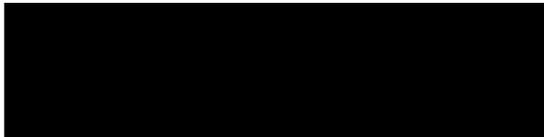
OFFICE: Newark, New Jersey

DATE:

SEP 20 2007

IN RE:

Applicant:



APPLICATION:

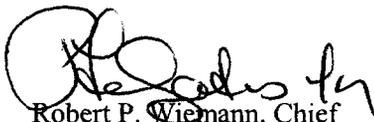
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 application was denied by the District Director in Newark, New Jersey. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a national and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The District Director denied the application on the grounds that the applicant had committed a felony or two or more misdemeanors committed in the United States, making him ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and that he had committed fraud by answering two questions on his application untruthfully.

On appeal the applicant asserts that he has not been convicted of a felony or two or more misdemeanors, and that he answered only one question in the application untruthfully, which was the result of a misunderstanding.

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 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.

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.
8 C.F.R. § 244.1.

On August 25, 2004, the Department of Homeland Security (DHS) terminated the existing TPS designation for Liberia and re-designated the country for TPS until October 1, 2005. The initial registration period pursuant to the re-designation was August 25, 2004 – February 21, 2005. The TPS designation was subsequently extended, but on September 20, 2006, DHS announced the termination of TPS for Liberia, effective October 1, 2007.

The record shows that the applicant filed a Form I-821, Application for Temporary Protected Status, at the District Office in Newark, New Jersey, on December 7, 2004, during the initial registration period after Liberia's re-designation for TPS in August 2004. On May 10, 2005, the District Director denied the application on the grounds that the applicant had been convicted of two or more misdemeanors committed in the United States, making him ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and that he had committed fraud by answering two questions on his application relating to his criminal record untruthfully.

On appeal the applicant asserts that he has not been convicted of a felony or two or more misdemeanors, and that he answered only one question in the application untruthfully, not because he intended to commit fraud, but because he was confused about the question. In support of the appeal the applicant submits a Certification of

Disposition from the Trenton Municipal Court in Trenton, New Jersey, dated August 29, 2005, which states that charges of simple assault and improper behavior/disorderly conduct filed against the applicant after an arrest on February 7, 2005, were dismissed on August 18, 2005.

However, the record also includes a fingerprint results report from the Federal Bureau of Investigation (FBI) which confirms that the applicant has been convicted of multiple criminal offenses. They are detailed as follows in the FBI report, prepared in April 2005:

- The applicant was arrested in New Jersey on April 9, 1997, on charges of obstructing the administration of law and resisting arrest. He was convicted on April 6, 1998, by the Hamilton Township Municipal Court on the charge of resisting arrest (section 2C:29-2A of the New Jersey Code of Criminal Justice), sentenced to a suspended confinement of 30 days, and given credit for seven days of jail time.
- The applicant was arrested in New Jersey on September 18, 1999, on charges of criminal mischief, burglary, and contempt of a court order. He was convicted on February 25, 2000, by the Mt. Laurel Municipal Court of (1) contempt of a court order (section 2C:29-9B of the New Jersey Code of Criminal Justice), (2) "defiant trespasser" (section 2C:18-3B of the New Jersey Code of Criminal Justice), and (3) criminal mischief (section 2C:17-3B of the New Jersey Code of Criminal Justice), and sentenced to one year of probation for each conviction.

Thus, the applicant was convicted of four criminal charges in 1998 and 2000. Under the New Jersey Code of Criminal Justice indictable criminal offenses are classified into first, second, third, and fourth degrees, in descending order of severity. *See* Code at 2C:43-1. An offense declared to be a crime without specification of degree is considered a fourth degree crime. *See id.* The Code at 2C:43-6 specifies that "a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (1) . . . a crime of the first degree . . . between 10 years and 20 years;
- (2) . . . a crime of the second degree . . . between five years and 10 years;
- (3) . . . a crime of the third degree . . . between three years and five years;
- (4) . . . a crime of the fourth degree . . . [up to] 18 months."

As the Code makes clear, even fourth degree crimes (which include offenses declared to be crimes without specification of degree) are punishable by up to 18 months imprisonment.

Thus, the applicant's four criminal convictions in the State of New Jersey make him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The director's decision to deny the application for TPS will therefore be 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 that burden.

ORDER: The appeal is dismissed.