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

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FILE:



OFFICE: Vermont Service Center

DATE:

SEP 24 2007

[WAC 02 119 55150]

[WAC 05 165 76233]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), withdrew the applicant's previously granted Temporary Protected Status and denied his re-registration application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be 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 director withdrew the applicant's previously approved TPS on the ground that he has been convicted of two misdemeanors in the State of California, making him ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and denied the re-registration application because the underlying TPS had been withdrawn.

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 at the time such status was granted, or at any time thereafter becomes ineligible for such status. See 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant acknowledges his criminal convictions and requests that he be given another chance.

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 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.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, at the California Service Center (CSC) on February 15, 2002 [WAC 02 119 55150]. The application was denied on the ground of abandonment by the CSC Director on May 28, 2004, after the applicant failed to respond to a request for certified copies of the final court dispositions of one (or two) arrest(s) in the State of California – on February 12, 2003 (and September 17, 2003) – for driving under the influence (DUI) of alcohol or drugs.

The applicant filed an appeal, along with the final court disposition of his arrest on February 12, 2003, showing that he was convicted on September 18, 2003, of driving a motor vehicle with a blood alcohol weight of 0.08 % or more (a misdemeanor) and driving with no proof of car insurance (an infraction). Since a denial based on abandonment cannot be appealed, the AAO remanded the case to the CSC on November 28, 2005, for consideration of the applicant's filing as a motion to reopen.

On January 5, 2006, the CSC Director reopened the case and approved the application for TPS. On the same day the director approved an application for re-registration of TPS, which the applicant had filed with the CSC on February 11, 2005 [WAC 05 165 76233].

The case was relocated in July 2006 to the VSC. On September 22, 2006, the VSC Director issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS, on the basis of a criminal history check conducted by the

Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested again in the State of California on a DUI charge on January 22, 2006. The applicant was requested to submit evidence of the final court disposition of this arrest. The applicant responded by submitting the final court disposition of the arrest (which occurred on January 12, 2006) indicating that the applicant was convicted on April 4, 2006, of the misdemeanor charge of driving a motor vehicle with a blood alcohol weight of 0.08 % or more.

On May 9, 2007, the VSC Director issued a Notice of Withdrawal of TPS, combined with a Notice of Decision to Deny TPS Re-Registration. After noting that the applicant's conviction of two or more misdemeanors committed in the United States rendered him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), the director withdrew the applicant's TPS as previously granted in the initial application, and denied the application for re-registration of TPS.¹

On appeal the applicant acknowledges that he committed the two misdemeanors for which he was convicted, but states that he has learned his lesson and will not repeat these mistakes in the future. The applicant requests that his case be reconsidered. The appeal cannot be sustained. Since the record establishes that the applicant has been convicted of two misdemeanors committed in the United States, he is ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the decision of the VSC Director will 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 this burden.

ORDER: The appeal is dismissed.

¹ The denial of the re-registration application was technically incorrect since the CSC Director had approved it on January 5, 2006. The VSC Director should have withdrawn the approval, instead of denying the application.