



U.S. Citizenship
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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

SEP 25 2007

IN RE:

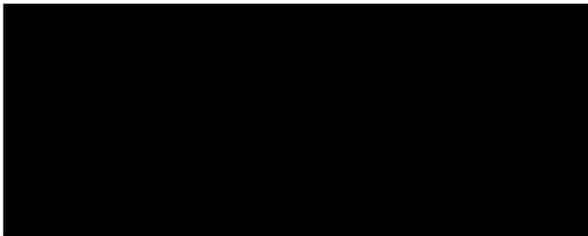
Applicant:



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DISCUSSION: Approval of the applicant's Temporary Protected Status was withdrawn by the Director, California Service Center (CSC), and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen and national 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 a TPS application on January 22, 2002. The Texas Service Center (TSC) director approved that application on March 16, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 29, 2005, and indicated that he was re-registering for TPS.

The CSC director withdrew the applicant's TPS status on August 3, 2006, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his past criminal convictions.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; [REDACTED])

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; (emphasis added)

Further, 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).

The record of proceedings contains a Federal Bureau of Investigation (FBI) report reflecting the following offenses:

- (1) On May 3, 2003, the applicant was arrested by the Alamo, Texas, Police Department, and charged with "Driving While Intoxicated;" and,
- (2) On January 27, 2004, the applicant was arrested by the Edinburg, Texas, Police Department and charged with "Poss Marij < 2 oz."

On March 21, 2006, the director sent a notice of intent to withdraw the applicant's TPS based on the applicant's arrests as detailed above, and requested the applicant to provide the final court dispositions for these arrests.

The applicant responded to the notice and submitted court documentation regarding his past arrests. Based on the record of proceedings, the director determined that the applicant had been convicted of two misdemeanor offenses; and therefore, withdrew the applicant's TPS on August 3, 2006.

On appeal, counsel states that the applicant assumed that the conviction of marijuana possession would not be part of the applicant's record since he completed the requirements of the court. Counsel also states that the applicant will request the court to have this conviction expunged from the applicant's record. Counsel further provides a copy of an application for post-conviction writ of habeas corpus seeking to vacate the applicant's conviction for possession of marijuana which was filed with the court on September 6, 2006.

A review of the record reflects that the applicant was convicted of two misdemeanor offenses. Counsel has not provided any additional documentation to the contrary. Therefore, the director's decision to withdraw the applicant's TPS will be affirmed, and the applicant remains ineligible for TPS.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.