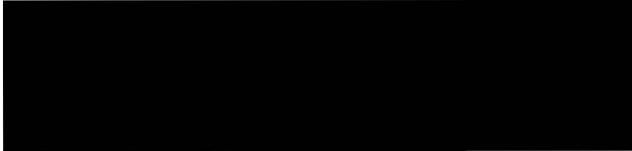


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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 022008
[WAC 01 17250084]

INRE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (CSC), approved the initial application. The approval of the application was subsequently withdrawn. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director withdrew the approval of the application because the applicant failed to provide the requested final court disposition for an arrest on February 8, 2001, and another arrest on May 15, 2006. The director subsequently withdrew the approval of the initial application.

On appeal, the applicant asserts that she was charged with possession of narcotics, the location of which has never been determined. The applicant states that she has worked hard and that she reports to her probation officer every month, but does not submit the disposition for the May 15, 2006, arrest.

The director may withdraw the status of an alien granted TPS 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. 8 C.F.R. § 244.14(a)(1). The director may also withdraw the status of an alien granted TPS under section 244 of the Act, at any time, if it is determined that the alien failed, without good cause, to successfully re-register for TPS. 8 C.F.R. § 244.14(a)(3). The director determined that the applicant abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history and withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3), finding that the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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) (I) Registers for TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

An applicant must provide all requested material necessary for the adjudication of his claim. 8 C.F.R. § 244.9(a) states, in relevant part:

- (a) Documentation. Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

Section 212(a)(2)(A)(i)(I) of the Act states the following:

(2) Criminal and related grounds

(A) Conviction of certain crimes

- (i) In general, except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of
 - (I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country

relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On July 9, 2007, the director sent the applicant a notice of intent to withdraw TPS and notified the applicant that her criminal history check revealed that, on February 8, 2001, she was arrested in by the Glendale Police Department and charged with operating exhibiting a deadly weapon, not a firearm and fighting in a public place. The director also notified the applicant that her criminal history check revealed that, on September 22, 2005, she was arrested by the Los Angeles Police Department and charged with transporting/selling a narcotic/controlled substance. The director requested that the applicant provide final court dispositions for this and all other arrests. The applicant did not respond to the director's request.

On October 4, 2007, the director withdrew the approval of the application because the applicant failed to provide the requested final court disposition for an arrest on February 8, 2001, and another arrest on May 15, 2006. The director withdrew the approval of the initial application and denied the re-registration application.

On appeal, the applicant asserts that she was charged with possession of narcotics, the location of which has never been determined. The applicant states that she has worked hard and that she reports to her probation officer every month, but did not submit the requested disposition.

The applicant has failed to provide any evidence revealing the final court disposition of her February 15, 2006, arrest detailed above. The applicant is ineligible for TPS because of her failure to provide information

necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to withdraw TPS will be affirmed.

Beyond the decision of the director, the AAO notes that the Los Angeles Police Department submitted the final court disposition of the September 22, 2005, arrest mentioned above. The disposition reflects that on May 15, 2006, in Los Angeles County Central District Court, a jury found the applicant guilty of the following:

1. Two counts of selling/transporting/ a controlled substance in violation of section 11352(A) of the California Health and Safety Code;
2. One count of possession of a narcotic/controlled substance for sale, in violation of section 11351, of the California Health and Safety Code.

Under California law, selling or transporting a controlled substance can result in a term of imprisonment of three to five years. Possession of a narcotic or controlled substance can result in a term of imprisonment of two to four years.

The regulation at 8 C.F.R. § 244.1 defines a felony as a crime punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served. In the applicant's case, she was convicted of three felonies: two punishable by a term of imprisonment of three to five years, and, one punishable by a term of imprisonment of two to four years. For purposes of TPS eligibility, the applicant has been convicted of three felonies. The record reflects that the applicant has been convicted of at least three felonies and is ineligible for TPS under the specific criminal provisions for TPS applicants under Section 244(c)(2)(B)(i) of the Act. The director's decision to withdraw the approval of the initial application will also be affirmed for this additional reason.

Also beyond the decision of the director, the applicant is inadmissible because she has been convicted of at least one crime relating to a controlled substance. I.N.A. § 212(a)(2)(A)(i)(I).

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 cited 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.