



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **APR 30 2008**

[EAC 07 159 52476, *appealJ*  
[EAC 99 18051288]

INRE:

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal. The appeal is dismissed.

The applicant is a native and citizen of Honduras who was granted TPS on January 20, 2004. The director subsequently withdrew the applicant's status and denied the re-registration application on June 4, 2007, when it was determined that the applicant had failed to provide the final court dispositions for his arrests "on July 2, 2005 and October 19, 2002, for 1) POSSESSION OF COUNTERFEIT FEDERAL RESERVE NOTES, 2) DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS, 3) VEHICLES; LIABILITY INSURANCE COVERAGE REQUIRED."

On appeal, counsel states that although the applicant was arrested in 2005 for the possession of counterfeit notes, he was never charged with anything related to that arrest. In support of this assertion, counsel submits a copy of a criminal records check done by the Kansas City Missouri Police Department and a Certificate of Search from the United States District court for the Western District of Missouri located in Kansas City, Missouri where the applicant resides and where he was arrested in 2005. Counsel also submits a printout from the Kansas City, Missouri Police Department showing that the applicant was arrested on July 12, 2005 for an unspecified charge and that the final disposition was guilty on August 16, 2005.

The record contains an affidavit from the applicant concerning his 2005 arrest. He states that he was questioned and fingerprinted by a Missouri State Highway Patrol trooper stationed at Harrah's North Kansas City Casino regarding a bill that he presented at the casino. He indicates that at that time, he was told that he was free to go and if his cooperation was needed for anything else, he would be informed by letter. He further states that he was never charged with any crime.

The VSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The VSC Director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 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.
- (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 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

*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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on October 19, 2002, the applicant was arrested by the Wyandotte County Sheriff's Office in Kansas, and charged with driving under the influence of alcohol or drugs and for not having required liability insurance coverage, both misdemeanors. The record shows that the applicant was convicted of the driving under the influence charge on November 7, 2002, and that the liability insurance coverage charge was dismissed on January 24, 2003.

The FBI fingerprint results report also shows that on July 2, 2005, the applicant was arrested by the State Highway Patrol Gaming Division in Jefferson City, Missouri, and charged with the possession of counterfeit Federal Reserve Notes. The record contains the applicant's affidavit concerning this arrest in which he states that he was never charged with any crime as a result of that arrest. However, on appeal, the applicant submitted a printout from the Kansas City, Missouri Police Department showing that he was arrested on July 12, 2005 for an unspecified charge and that the final disposition was guilty on August 16, 2005. Although the printout does not specify the specific charge that the applicant was found guilty of, the date of disposition seems to coincide with his arrest for the possession of counterfeit Federal Reserve Notes. The applicant has not provided sufficient documentation to resolve his criminal activity in 2005.

Accordingly, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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.

In removal proceedings held on August 10, 1995, an Immigration Judge in San Antonio, Texas, granted the applicant the opportunity to voluntarily leave the United States by February 10, 1995. The judge's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to Honduras. The record does not show that he departed this country as ordered.

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 met this burden.

**ORDER:** The appeal is dismissed.