identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

M1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 0 5 2008

[EAC 08 078 52219, *appeal*]
[WAC 01 241 54983]

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is stated to be a native and citizen of El Salvador who was granted TPS on February 11, 2004. The director subsequently withdrew the applicant's status and denied the re-registration application on December 21, 2007, when it was determined that the applicant had failed to submit final court dispositions for his arrests on January 28, 2006 and on March 6, 2006 for the illegal use of force not involving a firearm.

On appeal, the applicant states that he has only been convicted of one misdemeanor and that his conviction record contains only one misdemeanor arising from one incident with subsequent proceedings also arising out of the same incident. The applicant submits a copy of his electronic docket from the Superior Court of California for case number for consideration.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. **8 C.F.R. § 244.14(a)(1).**

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant 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 record reflects the following offenses:

(1) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on January 28, 2006, he was arrested by the Police Department in Los Angeles, California, for "CHARGE 1-001 COUNTS OF FORCE/ADW NOT FIREARM, GBI." However, despite the director's request, the applicant failed to provide the actual court disposition for this offense.

(2) The applicant's FBI report shows that on March 6, 2006, he was again arrested by the Police Department in Los Angeles, California, for "CHARGE 1-001 COUNTS OF FORCE/ADW NOT FIREARM, GBI." However, despite the director's request, the applicant failed to provide the actual court disposition for this offense.

(3) On May 8, 2006, the applicant was convicted by a Judge in the Superior Court of California, County of Los Angeles, of driving under the influence of alcohol and or drugs with bodily injury and hit and run causing death and or injury, both felonies. (Case

The applicant is ineligible for TPS due to his record of two felony convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS and deny the re-registration application is affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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.