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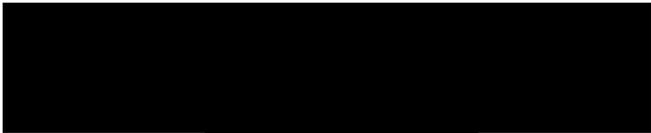
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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OFFICE: CALIFORNIA SERVICE CENTER DATE FEB 12 2008

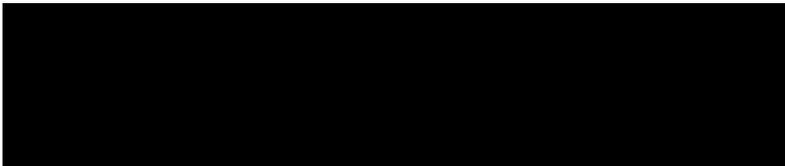
IN RE:

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 California Service Office. 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, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously denied his application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS and denied application for re-registration because he found that the applicant had failed to submit requested court documentation relating to his criminal record. 8 C.F.R. § 244.9(c).

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 withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because 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 However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application,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.

On appeal, counsel states that court hearings for the two charges are still pending and that the applicant has not, as of the date of the appeal, been convicted of two misdemeanors.

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).

The regulation at 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 record reveals that the applicant was arrested by the Irving (Texas) Police Department on August 22, 2004, and again on November 20, 2004, by the Dallas (Texas) Police Department for driving while intoxicated, in violation of Texas Penal Code section 49.04. By letter dated May 9, 2006, the director requested the applicant to submit evidence of the final disposition of these offenses. In response, the applicant submitted copies of April 6, 2006, documents from County Criminal Court No. 8 in Dallas indicating that cause number [REDACTED] was reset for June 14, 2006, and that the applicant intended to contest the charge before a jury. The documents also indicated that for cause number [REDACTED] which was also reset for June 14, 2006, the applicant had agreed to plead guilty. The director did not find this evidence sufficient to meet the applicant’s burden of proof, and on October 5, 2006, denied the application.

The director granted counsel’s October 26, 2006, motion to reopen, in which counsel stated that after several re-sets, the cases were set for final disposition on December 4, 2006, and evidence of the final dispositions would be provided to the service center.

On January 30, 2007, after failing to receive any additional documentation regarding the outcome of the applicant's cases, the director notified the applicant that failure to submit evidence of the final dispositions of his court case could result in withdrawal of his TPS. In his response, counsel submitted evidence that the case in cause number [REDACTED] had been continued until March 21, 2007. The applicant submitted no information regarding cause number [REDACTED]. On July 16, 2007, the director withdrew the applicant's TPS and denied his application for re-registration.

On appeal, counsel argues that the applicant has not been convicted of at least two misdemeanors. Counsel submits documentation reflecting that the applicant was found guilty in cause number [REDACTED] but filed a motion for a new trial on July 16, 2007. The motion was denied, and on September 5, 2007, the applicant filed an appeal. Counsel also states that the next court date in cause number [REDACTED] was September 4, 2007. Counsel submits a copy of a Form 520, Defendant's Request for Action, indicating that the case had been reset for September 4, 2007.

The record does not contain a final disposition of either of the charges against the applicant. Therefore, the director's decisions to deny the application for registration and to withdraw TPS will be affirmed.

An alien applying for TPS 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.