



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **JAN 02 2008**
[WAC 01 244 55118]

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:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant claims to be a native and citizen 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 director withdrew the applicant's TPS because he found the applicant was no longer eligible due to being convicted of two or more misdemeanors in the United States.

On appeal, counsel for the applicant asserts that a final court disposition cannot be provided and that the applicant's due process rights were violated and TPS should be restored.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the 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:
 - (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;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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).

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 record reveals the following offenses:

- (1) On June 21, 1992, the applicant was charged with Giving False Information to a Peace Officer by the Sheriff's Department of Oakland, California.
- (2) On June 21, 1993, the applicant was charged with VC 12500A, unlicensed driving (misdemeanor), and subsequently pled guilty on June 22, 1993, in the District Court of Alameda County, California. Case No. [REDACTED]
- (3) On December 21, 2003, the applicant was arrested by the Richmond Police Department, California, for Driving Under the Influence of Alcohol or Drugs. Documentation provided by the applicant confirms he was convicted of this misdemeanor.

In a Notice of Intent to Withdraw (NOIW) dated October 24, 2006, the director requested the final dispositions for the charges listed at No. 1 and 3 above. The record does not indicate the applicant responded.

The director withdrew the applicant's TPS on July 11, 2007. In this case the director improperly referenced 8 C.F.R. § 244.14(a)(3) in withdrawing the application for failing to properly re-register, and should have referenced 8 C.F.R. § 244.14(a)(1) because the alien was in fact no longer eligible for TPS due to his three misdemeanor convictions in the United States.

On appeal, the applicant asserts he cannot provide the actual final court order in either of the charges listed above.

The charges listed above were revealed as a result of an FBI fingerprints analysis, despite the fact that the state of California refuses to provide copies of the applicant's criminal record, it is clear he has been convicted of at least two misdemeanors in the United States. In addition, the applicant failed to reveal his prior conviction in 1993 or 2003, when submitting his application in 2001 or subsequent re-registrations in the years thereafter. The AAO will accept counsel's assertions that the state of California prevented the submission of the requested documentation, however, the record indicates, and the applicant has admitted, that he has been convicted of at least two misdemeanors in the United States.

The applicant is ineligible for TPS due to having been convicted of the two misdemeanors 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 the applicant's TPS will be affirmed. 8 C.F.R. § 244.14(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.