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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

[SRC 99 12653761]

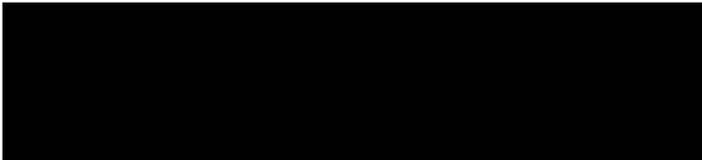
INRE:

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 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The record reveals that the director determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. 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 However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application,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.

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).

"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.

On March 30, 2007, the applicant was requested to submit the final court dispositions of his arrests on April 9, 2002, for driving under the influence and reckless driving in Miami, Florida and on November 18, 2005, for driving under the influence of alcohol or chemical substance in Jacksonville, Florida. The applicant was granted 30 days in which to submit the final court dispositions. However, no response was received prior to the issuance of the director's decision and there is no record of the denial notice, which was addressed to counsel's address, being returned as undeliverable.

On appeal, counsel submits the following court documentation which reveals:

1. On April 9, 2002, the applicant was arrested by the Miami Police Department for driving under the influence, a violation of statute 316.193, reckless driving, a violation of statute 316.192, and altered use of a temporary tag, a violation of statute 320.131(3). On September 3, 2002, the prosecutor for the Dade County Circuit and County Courts entered *nolle prosequi* for the reckless driving charge and dismissed the charge of altered use of a temporary tag. Case nos. [REDACTED]. The applicant pled *nolo contendere* to the driving under the influence charge, a misdemeanor. The applicant was placed on probation for six months and ordered to pay a fine. Case no. [REDACTED].
2. On October 27, 2006, the applicant was arrested for driving without a license, a violation of statute 320.03(3)(b). On November 17, 2006, the applicant pled guilty to this misdemeanor offense and was ordered to serve 22 days in jail. Case no. [REDACTED].

Counsel asserts that the offense mentioned in number two above, is an administrative traffic violation and the arrest does not disqualify the applicant for TPS. Counsel's assertion, however, has no merit as Title XXIII, Chapter 322.03(3)(b) of the Florida Statutes indicates, in pertinent part:

A resident of this state who is required by the laws of this state to possess a commercial driver's license may not operate a commercial motor vehicle in this state unless he or she possesses a valid commercial driver's license issued by this state. Except as provided in

paragraph (c),¹ any person who violates this paragraph is guilty of a misdemeanor of the first degree....

As such, the applicant is convicted of a misdemeanor offense for driving without a license.

On appeal, counsel asserts that there is no record of a second driving under the influence arrest. Counsel, however, has not presented any credible evidence to corroborate his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's second driving under the influence arrest was obtained from a fingerprint analysis from the Federal Bureau of Investigation records, and is therefore highly reliable. Furthermore, as this arrest occurred in Jacksonville, Florida, the case fell within the jurisdiction of the Duval County Courts and not within the jurisdiction of the Dade County Circuit and County Courts.

The applicant has failed to provide any evidence revealing the final court disposition of his November 18, 2005 arrest detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). The applicant is also ineligible for TPS due to his two misdemeanor 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 will be affirmed.

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.

¹ Paragraph "c" relates to individuals whose driver's license have been expired for a period 000 days or less and who drives a commercial motor vehicle within the state of Florida.