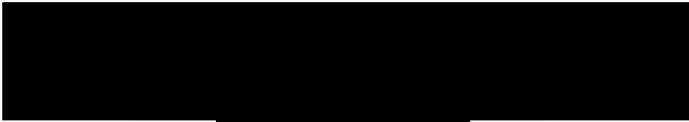


U.S. Citizenship
and Immigration
Services



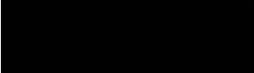
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OFFICE: Vermont Service Center

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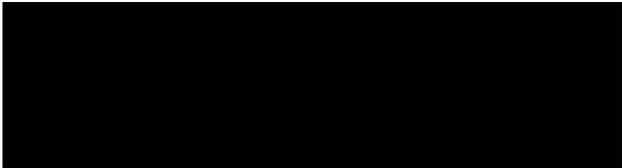
Applicant:



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 office that originally decided your case. 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and the re-registration application was denied by the Director, Vermont Service Center.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 citizen of Honduras 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 and denied the re-registration application because he found that the applicant had failed to respond to a request to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts through counsel that his failure to respond to the director's request does not constitute a basis to deny his annual re-registration, and that CIS erred in sending notice to the applicant's attorney of record.

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.
8 C.F.R. § 244.1.

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:
 - (I) 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses in California:

- (1) On March 15, 1996, the applicant was arrested by the Santa Clara Police Department for Theft of Personal Property.
- (2) On October 10, 2004, the applicant was received by the San Jose Department of Corrections for Driving Under the Influence.

Pursuant to a letter dated October 23, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on April 2, 2007.

On appeal, the applicant asserts through counsel that the regulation pertaining to annual re-registration of TPS does not allow CIS to deny a re-registration application for failure to respond to a director's request for evidence.

Counsel's assertion is without legal merit. The regulation at 8 C.F.R. § 244.17 clearly states that CIS may request additional information during the re-registration process. In addition, 8 C.F.R. § 244.14 clearly states that the director may withdraw an applicant's TPS status if he becomes ineligible. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). In this case the applicant's criminal convictions are a material line of inquiry, and the applicant's failure to respond to the director's request renders him ineligible for TPS.

It is the applicant's responsibility to notify CIS of any change in address, change in the attorney of record, or any change in the facts serving as the basis of eligibility for TPS. In this case the applicant has been requested to provide evidence that he remains statutorily eligible for TPS after a fingerprint check with the FBI revealed two criminal arrests. The applicant failed to respond to the director's request for such evidence, and the applicant has failed to provide such evidence on appeal, and instead relies on counsel's attempt to interpret pertinent regulations exclusively.

It is noted that the Notice of Withdrawal was mailed to the same address as was the Notice of Intent to Withdraw (NOIW) and the applicant clearly acknowledges receiving this latest notice. It is further noted that, although the Notice of Withdrawal reiterates the director's request for court documents, the applicant has still failed to provide the requested court documents relating to his criminal record.

The applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed above. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.P.R. § 244.9(a). Consequently, the director's decision to withdraw TPS for this reason 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.