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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COpy

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FILE: [REDACTED]
[WAC 03 02854112]

OFFICE: VERMONT SERVICE CENTER

DATE: JAN 03 2008

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: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 had failed to submit evidence necessary to adjudicate the application.

On appeal, the applicant submits court documentation relating to charges on her criminal record.

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 July 23, 2004, the applicant was arrested by the Riverside California Sheriffs Office for Burglary and Possession of Burglary Tools. Case No. _____ The applicant subsequently pled guilty to Shoplifting, a misdemeanor.
- (2) On November 23, 2004, the applicant was arrested by the Los Angeles Police Department for Grand Theft of Property over \$400. Case No. _ The defendant subsequently pled guilty to Trespass of Lands Under Cultivation, a misdemeanor.
- (3) On January 17, 2006, the applicant was arrested by the Los Angeles Police Department for Burglary. Case No. _____ The final disposition of this offense is not known.

On appeal, the applicant provides court records relating to her arrests and charges. The records confirm that the applicant has been convicted of at least two misdemeanors, numbers one and two above, and is thus ineligible for TPS as a matter of law. The dispositions of numbers one and two above were not known until the applicant submitted documentation on appeal, thus the director's decision was correct and based on the record as it was constituted at that time. Now, however, the basis of the application's denial will be ineligibility as a matter of law due to the applicant's conviction of at least two misdemeanors in the United States. 8 C.F.R. § 244.14(a)(1).

The disposition for the charge listed at number 3 above has not been provided. The applicant did not reveal any of her criminal charges as required when completing the form 1-821. As the application will be denied based on a statutory eligibility, this issue will not be discussed further. However, any future proceedings before CIS must resolve the status of the charge listed at number 3.

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. In this case evidence in the record confirms that the applicant is ineligible as a matter of law.

ORDER: The appeal is dismissed.