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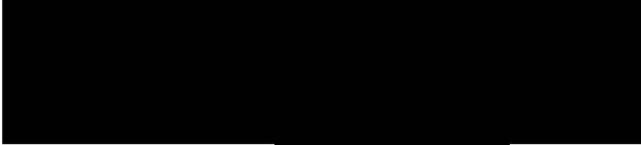
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 07 2008

[EAC 08 065 52012, appeal]
[SRC 99 21550881]

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (**VSC**), and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of Nicaragua who was **granted** TPS on August **18**, 2000. The director subsequently withdrew the applicant's status and denied the re-registration application on November 29, 2007, when it was determined that the applicant had **failed** to submit final court dispositions for four charges resulting from his three arrests.

On **appeal**, the applicant outlines his efforts to obtain court dispositions for the charges **against him** and submits court dispositions for a driving while **intoxicated** arrest on April **3**, **1999**, and for a possession of marijuana arrest on December 11, 2004.

The VSC Director withdrew the applicant's TPS following 8 C.F.R § 244.14(a)(3) which provides for withdrawal of status if the alien **fails** without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period **after** the benefit is initially **granted**. The director should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS **if** the alien was not in **fact** eligible at the time such status was **granted**, or at any time thereafter becomes ineligible.

Section 244(c) of the **Act**, and the related regulations at 8 C.F.R § **244.2**, provide that an applicant 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in **paragraph** (f)(2) of this section.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 October 1, 1999, the applicant was convicted of driving under the influence by a Judge of the Traffic Division of the State of Florida in the Circuit and County Courts of Miami-Dade County, Florida. (Case number _____ -

2. On December 12, 2001, the applicant was convicted of the possession **of marijuana by** a Judge of the Circuit and County Courts of Dade County, Florida. (Case number _____ -
3. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 11, 2004, the applicant was arrested by the Hialeah Police Department in Florida, for driving under the influence.
4. The FBI fingerprint results report shows that on March 4, 2006, the applicant was arrested by the Metro-Dade Police Department in Florida, for driving when he knew that his driving license had been suspended.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, listed in Items #1 and #2 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 and deny the re-registration application is affirmed.

Beyond the decision of the director, the applicant is also ineligible for TPS due to his inadmissibility for being convicted of a crime relating to a controlled substance. Section 212(a)(2)(A)(i)(II) of the Act. Consequently, the director's decision is affirmed for this additional reason.

In a Notice of Intent to Deny dated August 1, 2007, the applicant was requested to submit final court dispositions for all of the charges outlined above. To date, he has not submitted court dispositions for his arrest(s) listed in Items #3 and #4 above. Accordingly, he is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R § 244.9(a). Consequently, the director's decision to withdraw TPS is affirmed for this additional reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.