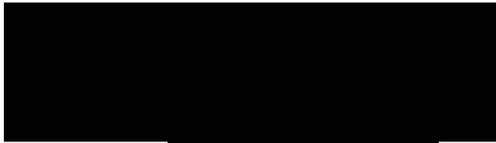


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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE MAR 03 2008
[SRC 99 17653269]

INRE: Applicant: [REDACTED]

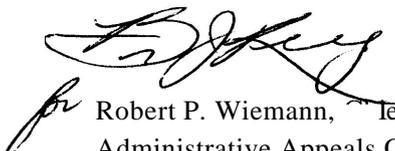
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, ^{1e}
Administrative Appeals Office

DISCUSSION: Approval of the application was withdrawn by the Director, Yermont Service Center (YSC). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8U.S.C. § 1254.

The director withdrew approval of the applicant's TPS because he found the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to a drug-related conviction.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

On appeal, counsel for the applicant submits a brief.

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
- (t)
 - (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 is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) **any law or regulation** of a State, the United States, or a foreign country **relating to a controlled substance** (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record shows that the applicant was arrested in Chesterfield County, Virginia, on July 21, 2004, for possession of marijuana, in violation of Virginia Code § 18.2-250.1. On September 30, 2004, the applicant appeared in the Chesterfield General District Court and pleaded guilty to the amended charge of "Possession or Distribution of Controlled Paraphernalia: Meaning of Controlled Paraphernalia," in violation of Virginia Code § 54.1-3466. The applicant was sentenced to confinement in jail for a term of 30 days (suspended), a fine of \$200 (\$100 suspended), and a fixed misdemeanor fee of \$67.

On appeal, counsel asserts that the applicant's conviction does not relate to a controlled substance, as defined in section 102 of the Controlled Substances Act, and that Virginia Code § 54.1-3466 relates only to "controlled drugs," which are not synonymous with "controlled substances." Counsel's argument is not persuasive.

The applicant was arrested on the charge of possession of marijuana, which is listed as a controlled substance in U.S. law, section 102 of the Controlled Substances Act. While the charge was subsequently amended to possession of drug paraphernalia, that paraphernalia logically related to the marijuana possession with which the applicant was originally charged. Counsel has provided no additional information about the nature of the drug paraphernalia at issue, and no evidence that the paraphernalia was related to a drug that is not on the controlled substances list. Since marijuana is a controlled substance and the applicant pleaded guilty to possession of drug paraphernalia after his arrest for possession of marijuana, the AAO concludes that the applicant "has been convicted of...acts which constitute the essential elements of a violation of ...[a] law...of...the United States...relating to a controlled substance," within the meaning of section 212(a)(2)(A)(i)(II) of the Act.

Based on a review of the record, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) due to his drug-related conviction. Consequently, the director's decision to withdraw the approval of the application will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). He also has failed to submit sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

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.

It is noted that the applicant was previously removed from the United States on November 16, 1995, pursuant to an order of removal issued by an Immigration Judge (11) in Laredo, Texas, on October 3, 1995.

ORDER: The appeal is dismissed.