

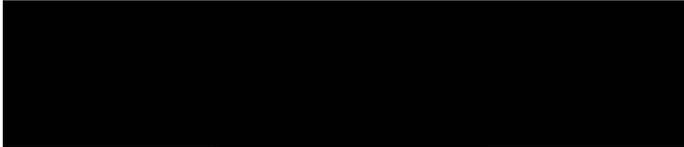


U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 02 2008
[EAC 08 025 50786, appeal]
[EAC 01 14451452]

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: SELF-REPRESENTED

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 EI Salvador who was granted TPS on November 12, 2003. The director subsequently withdrew the applicant's status and denied the re-registration application on September 28, 2007, when it was determined that the applicant had failed to submit the requested court dispositions for his arrests on August 17, 2005 and February 17, 2007 in Nashville, Tennessee.

On appeal, the applicant submits his referral form from the Education Director of the Metropolitan General Sessions Court DUI Safety Center of the Metropolitan Government of Nashville and Davidson County, Tennessee, requiring his admission to the Samaritan IOP Rec-Ctr by "September 6th." (Warrant # _____). He also submits a letter dated October 25, 2006, from _____, a Bilingual Counselor at the Samaritan Recovery Community, Inc. Outpatient Services advising that the applicant is successfully attending the "IOP Program" under at Samaritan Recovery Community. (Warrant # _____ Covering both ICVIDUI and DUI).

Section 244(c) 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. He 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.

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 reflects the following offenses:

- (1) On August 17, 2005, the applicant was arrested by the Metropolitan *Police* Department in Nashville, Tennessee, and charged with implied consent violation and driving under the influence, both misdemeanors.
- (2) On February 17, 2007, the applicant was arrested by the Metropolitan Police Department in Nashville, Tennessee, and charged with driving under the influence, a misdemeanor.

In his Notice of Intent to Deny dated July 6, 2007, the director requested the applicant submit final court dispositions for the two arrests listed above. The applicant's response did not contain the court disposition documents. On appeal, he submits evidence that he was completing court required treatment for his unspecified convictions. However, the submission of this treatment documentation does not excuse the applicant from submitting the required court dispositions.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application (Items # 1 and # 2 above). 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS is 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.