



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center DATE: SEP 02 2008

[SRC 99 178 50682]
[EAC 07 305 74126]

IN RE:

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:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application denied by the Director, Vermont Service Center.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 is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on March 18, 2000.

On September 21, 2007, the director notified the applicant of an intent to withdraw his TPS status and deny his re-registration application as his criminal history check has revealed that the applicant was arrested on March 27, 2004, by the Houston Police Department and charged with Driving While Intoxicated; and on July 3, 2005, the applicant was arrested by the Giddings Sheriff's Office and charged with failure to identify giving false/fictitious info. The director afforded the applicant thirty days to submit final court dispositions regarding his arrests and evidence to overcome the reasons for denial. On May 29, 2008, the director withdrew the applicant's TPS and denied the re-registration application after he determined that the applicant had failed to respond within thirty day with any evidence to overcome the grounds for withdrawal. The applicant has now submitted an appeal from the director's decision.

On appeal, counsel states that the director's decision to withdraw the applicant's TPS was in error as the applicant's convictions are for Class B misdemeanors. Counsel further states that under the Texas Penalty code, a Class B misdemeanor is only punishable by no more than 6 months in jail. Counsel also indicated that he will submit a brief within 30 days with additional argument. To date, no additional evidence has been submitted. Therefore, the record must be considered completed.

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 shows the following:

1. On March 27, 2004, the applicant was arrested by the Houston Police Department, Agency Case No. [REDACTED] and charged with (1) DRIVING WHILE INTOXICATED. On May 12, 2004, in the County Criminal Court at Law No. 5, Houston, Court Agency - [REDACTED] Cause No. [REDACTED], the applicant was convicted of a Class B Misdemeanor. The applicant was placed on one year probation and ordered to pay \$400 in fines.
2. On July 3, 2005, the applicant was arrested by the Sheriff's Office Giddings, Agency Case No. [REDACTED], and charged with (1) FAIL TO IDENTITY GIVING FALSE/FICTITIOUS INFO. On April 19, 2006, in the County Court Giddings, Court Agency [REDACTED] Cause No. [REDACTED] the applicant was convicted of a Class B Misdemeanor. The applicant was ordered to pay \$1000 in fines.

The applicant, in this case, has failed to provide the requested final court disposition for all 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.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS application 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.