



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: SEP 02 2008
[WAC 01 173 51356]

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: 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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application was denied by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated be a citizen of El Salvador who was granted Temporary Protected Status (TPS) on April 30, 2002, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On June 4, 2007, the Service Center notified the applicant of a notice of its intent to deny his re-registration application and to withdraw his TPS. A criminal history check has revealed that the applicant was arrested and charged with (1) Counts of Vandalism \$10,000 or More. The director afforded the applicant 30 days to submit the final court disposition regarding every charge against him. On July 24, 2007, the applicant responded by submitting a copy of a Certificate of Discharge/Exoneration Bond; a copy of a Court Community Service Program; and, a copy of a Progress Report. The applicant further explained that he did not receive the notice due to a mistake by the postman and it was given to him until July 24, 2007. It is noted that the applicant also submitted a Form AR-11, Alien's Change of Address Card, signed by the applicant on July 24, 2007, indicating that he had changed his address from [REDACTED], Los Angeles, CA 90007 to [REDACTED], Los Angeles, CA 90010.

On November 14, 2007, the Service Center re-sent two notices of its intent to deny the applicant's re-registration and to withdraw his TPS application to his new addresses. It is noted that one notice was sent to the applicant at [REDACTED], Los Angeles, CA 90010, and the other at [REDACTED], Los Angeles, CA 90010. The notices also indicated that the applicant was arrested and charged with (1) Counts of Vandalism \$10,000 or More, and (1) Counts of Possess Narcotic Control Substance. The purpose of the notice was for the applicant to submit the final court disposition regarding every charge against him. The director afforded the applicant 30 days to respond to these notices.

On April 22, 2008, the director subsequently withdrew the applicant's Temporary Protected Status and denied the re-registration application after he determined that the applicant had failed to timely and adequately respond to the November 14, 2007 notices.

On appeal, the applicant asks CIS to reconsider his case due to the fact that he was charged for these offenses by mistake. He further states that he complied with all of the requirements from the judge and that he has been clean from substances.

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 of proceeding reflects the following:

1. On May 20, 2005, the applicant was arrested by the Police Department Los Angeles, Agency Case No. and charged with (1) COUNTS OF VANDALISM \$10000 OR MORE.
2. On April 14, 2007, the applicant was arrested by the Police Department of Los Angeles, Agency Case and charged with (1) COUNTS OF POSSESS NARCOTIC CNTL SUB.

On appeal, the applicant states the progress report shows that he has complied with all of his visits and a negative result for substance abuse. In addition, the applicant submits the following:

1. A statement from the Superior Court of the State of California for the County of Los Angeles dated May 14, 2008, with a box marked “Other” has been checked; and,
2. A copy of a Progress Report from Substance Abuse and Crime Prevention Act, Los Angeles Superior Court, Behavioral Health Services, Inc., indicating that the applicant is in compliance with treatment structure and that he has been able to demonstrate growth in his recovery by testing negative for poly substances and addressing his issues at hand.

However, the final court disposition for the arrests 1 and 2, are not contained in the record. The applicant, in this case, has failed to provide any evidence revealing the 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.