



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[SRC 99 194 52373]

OFFICE: TEXAS SERVICE CENTER DATE: AUG 24 2007

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Texas Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of Honduras whose Temporary Protected Status (TPS) application was granted by the director on July 3, 2000. The director subsequently withdrew the applicant's Temporary Protected Status on August 7, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors and/or a felony.

The director may withdraw the status of an alien granted Temporary Protected Status 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 states that the applicant has not been convicted of any misdemeanor and is therefore eligible for TPS.

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 reveals the following offenses:

- On April 4, 2002, at the Criminal Court of Harris County, Texas, the applicant pled guilty to possession of cocaine, less than 1 gram and was sentenced to three years community supervision and a fine of \$450.00, with deferred judgment. Case number [REDACTED] The applicant has failed to provide the final court disposition of this offense.
- On March 26, 2004, at the Criminal Court of Harris County, Texas, the applicant pled guilty to driving while intoxicated (DWI) and was sentenced to 10 days imprisonment. Case number [REDACTED]
- On August 20, 2005, the applicant was arrested by the Jacksonville, Florida Sheriff's Office and charged with driving under the influence (DUI) and resisting an officer.

On appeal, counsel states that the DWI and DUI should not be considered misdemeanor convictions because they are not crimes of moral turpitude. Counsel further stated that the applicant's cocaine drug conviction of less than one gram is not a crime of moral turpitude, but rather a crime against himself, and should not be considered a misdemeanor conviction for purposes of determining the applicant's immigration status. Counsel summarized that "Congress only intended for aliens to be excluded for crimes that put United States

Citizens in harms [sic] way, crimes of violence not immature acts of possessing a controlled substance ... it is more important to continue to provide him protective status than it is to punish a crime he committed before he was 21 years old." Counsel's statements are not persuasive and are inaccurate. Congress very clearly stated that an alien is ineligible for TPS if he has been convicted of any felony or two or more misdemeanors. Congress did not differentiate between "types" of misdemeanors and felonies, as is suggested by counsel. Furthermore, although it is irrelevant to the case, it is noted that the applicant was arrested for possession of cocaine on February 1, 2002, which was his 23rd birthday, not "before he was 21 years old" as was alleged by counsel.

Although the Texas court decided to continue the applicant's drug case for possible dismissal upon completion of the terms of probation, the applicant pled guilty and his liberty was restrained, in that he was placed on probation or court supervision to enter and complete programs as directed by the probation department. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act.

Under section 101(a)(48) of the Act:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
 - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The charges in the instant case are considered misdemeanor offenses as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of two misdemeanor offenses, and therefore, the director's decision to withdraw the approval of the 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.