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FILE:

[WAC 01 205 52833]
[WAC 05 216 74820]

OFFICE: California Service Center

DATE:

FEB 15 2007

IN RE:

Applicant:

APPLICATION:

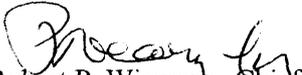
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemarn, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied the application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

The director withdrew the applicant's previously approved TPS and denied his re-registration application because he found that the applicant had been convicted of two misdemeanors, making him ineligible for TPS under section 244(c)(2)(B) of the Act.

On appeal, the applicant asserts that he is not ineligible for TPS because his convictions are not final.

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.

8 C.F.R. § 244.1.

The record reveals that the applicant, who was initially granted TPS pursuant to an application filed in May 2001, filed the current application for re-registration or renewal of TPS on March 4, 2005. On September 1, 2005, the director issued a Notice of Intent to Withdraw the applicant’s TPS based on records indicating that the applicant had been arrested twice in San Jose, California: (1) on April 12, 2003, on the charge of being under the influence of alcohol or drugs; and (2) on May 15, 2003, on the charges of driving a vehicle with a blood alcohol content of 0.08% or higher and “failing to provide evidence.” The applicant was requested to submit evidence of the final court disposition(s) of these arrests.

On September 22, 2005, the applicant filed a response to the director’s notice, which included the final court dispositions of the two arrests.

1. With respect to the arrest on April 12, 2003, the records of the Municipal Court for the County of Santa Clara, San Jose Facility, confirm that the applicant was arrested on a misdemeanor charge of being “found in a public place under the influence of intoxicating liquor is such a condition that [he] was unable to exercise care for his own safety and for the safety of others.” The applicant was found guilty on May 28, 2005, and was sentenced to two years probation and one day in jail.
2. With respect to the arrest on May 15, 2005, the records of the Superior Court of California, County of Santa, San Jose Facility, confirm that the applicant was arrested on the misdemeanor charge of “driving with a blood alcohol level of 0.08 or more, in violation of

Vehicle Code section 23152(b),” and for “possession of [an] open container while driving, in violation of Vehicle Code section 23222(a),” which was termed “an infraction.” The applicant was found guilty of the two charges on June 30, 2003, and was sentenced to three years probation and (on the violation of Vehicle Code section 23152(b)) to 12 days in jail.

Based on the foregoing evidence, the director withdrew the applicant’s formerly granted TPS on January 19, 2006, in accordance with 8 C.F.R. § 244.14(a)(1), and denied the applicant’s re-registration application in a Notice of Decision issued on February 1, 2006.

On appeal, the applicant asserts that “[m]y convictions are not final, I am seeking post conviction relief.” According to the applicant, he was arrested on “vehicle code violations which have been dismissed pursuant to CPC 1210.1.” The applicant’s claims are contradicted by the final court dispositions of his two arrests, which show that after each arrest he was convicted of a misdemeanor, as defined in 8 C.F.R. § 244.14(a)(1), neither of which has been dismissed. Since the record establishes that the applicant has been convicted of two misdemeanors committed in the United States, he is ineligible for TPS under section 224(c)(2)(B)(i) of the Act.

The AAO notes that an Immigration Judge issued a decision on March 7, 2006, ordering that the applicant be removed to El Salvador after he failed to appear at a removal hearing.

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.