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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

[EAC 01 244 56847]

OFFICE: Vermont Service Center

DATE: **MAY 21 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 application was 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 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 denied the application because he determined that the applicant was ineligible for TPS because the applicant had been convicted of possession of a controlled substance committed in the United States.

On appeal, counsel, on behalf of the applicant, submits evidence in support of the applicant's eligibility 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 is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On November 6, 1995, the applicant was arrested in Rockville, Maryland and charged with "Theft Under \$300," and "Conp to Steal", and;
- (2) On May 21, 2000, the applicant was arrested in Washington, D.C., and charged with "AUSCA PWID Cocaine," under the alias [REDACTED]

Pursuant to a notice of intent to deny his application for TPS dated April 10, 2003, the applicant was requested to submit the final court dispositions for the charges detailed above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charges were classified as felonies or misdemeanors. Also, the applicant was requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

The applicant responded to the director's request and submitted the following documents:

- (3) Copies of true test printouts from the District Court of Maryland for Rockville, Maryland, reflecting that the charges on November 6, 1995, for two counts of "Theft: Less \$300 Value" were dismissed, and;
- (4) Copies of Case Inquiry Screen printouts reflecting that the applicant was found guilty USCA P W/D D Cocaine- U840."

The director determined that the applicant was ineligible for TPS because the applicant was convicted of a crime involving a controlled substance within the United States. Therefore, the director denied the application on July 10, 2003.

On appeal, counsel indicates that he will be submitting a brief within 30 days. However, as of the date of this notice, no additional evidence has been added to the record of proceedings; therefore, the record will be considered complete.

The applicant is inadmissible to the United States because of his conviction of Possession of Cocaine pursuant to Section 212(a)(2)(A)(i)(II) of the Act. Thus, the applicant is ineligible for TPS and the director's decision to deny the application for TPS 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.