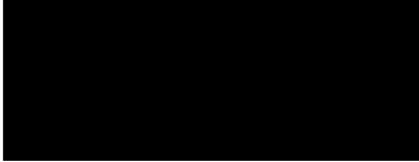




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 07 2007
[SRC 99 212 50543]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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

The applicant is stated to be a native and citizen of Honduras who was granted TPS on June 28, 2000. The director subsequently withdrew the applicant's status and denied his re-registration application on May 1, 2007, when it was determined that the applicant had failed to respond to a Notice of Intent to Withdraw by providing court dispositions for his arrests on May 2, 2003, November 5, 2005 and on April 2, 2006.

On appeal, the applicant states that "All the charges imposed to me were pay off, and my record is now clean according with the court. For all this I also have documentation and a personal record issued by the court."

The VSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The VSC Director should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on May 2, 2003, he was arrested by the Nashville Police Department in Tennessee for driving under the influence, a misdemeanor.

- (2) The applicant's FBI fingerprint results report shows that on November 5, 2005, he was arrested by the Metro Police Department of Nashville, Tennessee, and charged with two counts of "capias for capias,"¹ a misdemeanor, driving under the influence, 2nd offense, implied consent violation, open container violation, and driving on a revoked license.
- (3) The applicant's FBI fingerprint results report shows that on April 2, 2006, he was arrested by the Metro Police Department of Nashville, Tennessee, and charged with public intoxication.

On July 26, 2006, the VSC Director sent the applicant a Notice of Intent to Withdraw (NIW) indicating that his TPS would be withdrawn if he did not provide the final court dispositions for his May 2, 2003, November 5, 2005 and April 2, 2006 arrests. The applicant did not respond the director's NIW. To date, the applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed above. On appeal, the applicant states that all of his charges have been paid for and that he considers his record clean according to the court. However, this statement does not excuse the applicant from submitting the final court dispositions for his arrests as required. 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 and deny the re-registration application is affirmed.

Although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Consequently, the director's decision to withdraw TPS and deny the re-registration application is affirmed for this additional reason.

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.

¹ Capias is defined as a writ issued by a court directing an officer to arrest the person named. Webster's New World Dictionary of American English 207 (Victoria Neufeldt ed., Third College Edition, Simon & Shuster, Inc. 1988).