

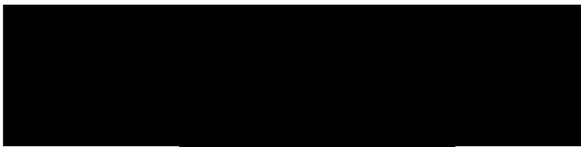
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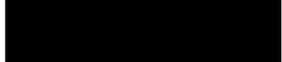
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center

DATE:

JAN 03 2008

[EAC 01 19051020]

INRE:

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant claims to be 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 TPS because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant acknowledges that he has made mistakes but asks CIS to approve his application. In support of his appeal the applicant submits a criminal records check.

The director improperly referenced 8 C.F.R. § 244.14(a)(3) in withdrawing the application for failing to properly re-register, and should have referenced 8 C.F.R. § 244.14(a)(1) because the alien was in fact no longer eligible for TPS due to his misdemeanor convictions in the United States. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.2d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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)(2XB)(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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(iXI) of the Act.

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 record reveals the following offenses:

- (1) On June 21, 1998, the applicant was arrested by the Baltimore Police Department for Possession of Cocaine. Case No. [REDACTED]
- (2) On June 23, 2002, the applicant was arrested by the Baltimore Police Department for Prostitution - General. Case No. [REDACTED]

Pursuant to a Notice of Intent to Deny (NOIO) dated September 27, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 8, 2007.

On appeal, the applicant asks that CIS reconsider his case.

The criminal records check provided by the applicant fails to reveal the disposition of the applicant's trial on the charges above. The information provided essentially reveals what CIS already knows due to the FBI criminal records check, that the applicant was charged with certain crimes, and indicate that the applicant may have been convicted. The applicant has not provide an actual final court disposition for the charges listed above. Without this information CIS cannot make a determination as to the status of the charges against the applicant, the nature of the applicant's conviction, and whether or not the applicant was convicted of misdemeanors or felonies. The director's NOID clearly and specifically requested this information.

The applicant has failed to provide the actual final court disposition 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 deny the application for this reason will be affirmed.

The applicant failed to reveal his criminal charges as required on the Form 1-821, Application for Temporary Protected Status. Every proscribed form submitted shall be executed according to instructions on the form, failure to do so can lead to the dismissal of an application for abandonment. 8 C.F.R. § 103.2(a)(1); 8 C.F.R. § 103.2(13). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Any future proceedings under this application must include a waiver for failure to reveal criminal charges as required on the initial application.

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.