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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

[LIN 03 030 50083]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 30 2010

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: Self-represented

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 withdrew TPS because he found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant apologizes for his previous wrongdoings and indicated that he has complied with all the requirements of the court. The applicant submits court documentation indicating the drug conviction has been expunged.

The director may withdraw the status of an alien granted TPS 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).

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).

"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, 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 FBI report dated January 22, 2009, reflects that on November 22, 2007, the applicant was arrested by the Police Department in West Des Moines, Iowa for possession of one gram of a controlled substance – marijuana, a violation of Iowa Code section 124.401(5), a misdemeanor.

In response to the Notice of Intent to Withdraw TPS issued on January 27, 2009, the applicant submitted court documentation from the Polk County District Court of Iowa, which indicates that on February 21, 2008, the applicant pled guilty to the offense. The court accepted the applicant's plea, granted deferred entry of judgment for a period of one year, and ordered the applicant to pay a fine and attend a substance abuse class. The court record indicates that on September 5,

2008, the court ordered the deferred entry of judgment program terminated, the plea was set aside, and the case was expunged. [REDACTED]

Under the relevant provisions of the Federal First Offender Act (FFOA), a criminal defendant will not be considered to have a "conviction" for any purpose if the conviction is a first time offense for simple possession of a controlled substance, if he/she has no prior drug offense convictions, and has not previously been the subject of a disposition under FFOA, and was placed on a term of probation. The rule regarding expungements pursuant to the FFOA was formally adopted in immigration proceedings by the Board of Immigration Appeals (BIA) in *Matter of Manrique*, 21 I&N Dec. 58 (BIA 1995). The BIA held that any alien who has been accorded rehabilitative treatment under a state statute will not be deported if he establishes that he would have been eligible for federal first offender treatment under the provisions of the FFOA had he been prosecuted under federal law. *Matter of Manrique, id.*

In the instant case, the applicant's conviction of simple possession of a controlled substance was a first time offense. The record does not reflect that the applicant had previously been the subject of a disposition under the FFOA, and he was sentenced to a term of probation. The entry of judgment was deferred, and the applicant was placed on probation for a period of one year. Subsequent to the applicant's successful completion and discharge from probation the court expunged the record. Had the applicant been prosecuted under federal law, 21 U.S.C. section 844, the applicant would have qualified for treatment under the FFOA had he been charged with federal offenses. The applicant's expungement under Iowa state law is the equivalent of treatment under the FFOA, and is not a valid conviction for immigration purposes.

Therefore, the applicant cannot be found inadmissible under section 212(a)(2)(A)(i)(II) of the Act. There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and the application will be approved.

The denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the applicant's initial TPS application has been approved, the denial of the re-registration application will be withdrawn and also be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.