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APR 27 2007

FILE:



OFFICE: California Service Center

DATE:

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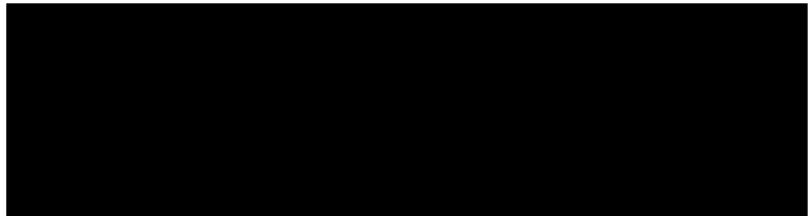


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IN RE:

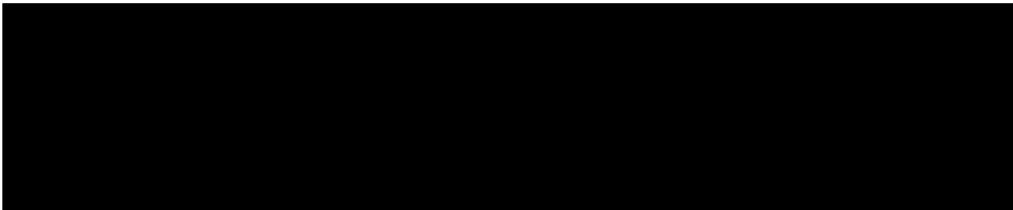
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied his re-registration application. The matter is now on appeal before the Administrative Appeals Office (AAO). 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 denied the re-registration application for failure of the applicant to provide final court dispositions for all of his criminal arrests and convictions, and withdrew the applicant's previously approved TPS on the ground that the applicant had failed to comply with the re-registration requirements.

The director may withdraw the status of an alien granted Temporary Protected Status 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. *See* 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant asserts that he did not commit any of the crimes identified in the director's decision, that he was not in the United States at the times of the arrests, and that associating him with the crimes is a case of mistaken identity. The applicant requests that a second biometric examination be taken.

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 on May 16, 2003, pursuant to an application filed in August 2001, filed the current application for re-registration of TPS on January 19, 2005. On July 31, 2006, the director issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS on the basis of CIS (Citizenship and Immigration Services) records indicating that the applicant had been arrested twice by the Jackson County Sheriff's Office under the name of [REDACTED] – on January 24, 1997, and February 17, 1997 – on charges of driving under the influence (DUI) of an intoxicating substance, and once by the Medford Police Department under the name of [REDACTED] – on January 24, 1999 – on charges of driving under the influence of an intoxicating substance and criminal possession of forged instruments, 2<sup>nd</sup> degree. The AAO notes that the town of Medford and Jackson County are located in the State of Oregon. The applicant was requested to submit evidence of the final court disposition(s) of these and all other arrests in the United States.

In response to the NOIW the applicant asserted that the CIS records were mistaken because he was still living in El Salvador in the late 1990s, that he did not enter the United States until the spring of 2000, as indicated in

his TPS applications, that he was not arrested for the specified crimes, and that he therefore could not provide evidence of their final court dispositions. The applicant requested that he be fingerprinted again.

On August 22, 2006, the director issued a Notice of Withdrawal of TPS, and Notice of Decision to Deny TPS Re-Registration. The director stated that the applicant had failed to adequately respond to the NOIW, which constituted both a failure to re-register for TPS in the form and manner specified by CIS and an abandonment of the re-registration application, citing the regulations at 8 C.F.R. § 244.17(a) and 8 C.F.R. § 244.9(c). The director withdrew the applicant's formerly approved TPS for failure to comply with the re-registration requirements, citing the regulations at 8 C.F.R. § 244.14(a)(3) and 8 C.F.R. § 244.17(c). The director also denied the re-registration application for failure to provide the final court dispositions for all criminal arrests and convictions, citing the regulation at 8 C.F.R. § 244.9(c).

On appeal the applicant reiterates his contention that he was not the person arrested on the three dates in 1997 and 1999 identified in the director's decision, that he was not in the United States at those times, and that he consequently could not provide any evidence of the final court dispositions of those arrests. The applicant requested that his biometrics be taken again.

The burden of proof is upon the applicant to establish that he or she meets the requirements for TPS. Applicants shall submit all documentation as required in the instructions or requested by CIS. *See* 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *See* 8 C.F.R. § 244.9(b).

The AAO is not persuaded by the applicant's arguments on appeal. The evidence of the applicant's three arrests is contained in a record compiled by the Federal Bureau of Investigation (FBI) based on the applicant's fingerprints. According to the FBI record, the two DUI charges in January and February 1997 resulted in misdemeanor convictions, for each of which the applicant was sentenced to 12 days in jail and three years probation. Though the applicant asserts that he is not the person(s) identified in the arrest record, the AAO notes, in addition to the fingerprints, a similarity of other identifying indicia such as signatures and photographs between the applicant and the arrestee in 1997 – [REDACTED] CIS records indicate that this individual is a Guatemalan national who entered the United States without inspection in 1992, was deported to Guatemala in 1997, re-entered the United States illegally in 1998, and was deported again in 1999. The AAO also notes that the photocopied birth certificate provided by the applicant with his initial TPS application, as evidence of his El Salvadoran nationality, was not registered in close proximity to the applicant's purported date of birth – March 23, 1954 – but nearly half a century later on May 9, 2001 – *i.e.*, contemporaneous with the TPS application.

The AAO concludes that the applicant has failed to demonstrate that he is not the individual(s) identified in the arrest record compiled by the FBI, and has failed to submit any evidence of the final court records of those arrests. The AAO agrees with the director that the applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. *See* 8 C.F.R. § 244.9(a). Accordingly, the director's decision to withdraw the applicant's previously approved TPS and deny the application for re-registration will be affirmed.

Beyond the decision of the director, the documentation of record indicates that [REDACTED] is a Guatemalan national, born on March 11, 1956, who entered the United States without inspection in

February 1992. After an asylum application was denied on January 28, 1994, a warrant of deportation was issued on August 10 1994. The applicant failed to appear for deportation as scheduled on September 7, 1994. The applicant was subsequently arrested in Eagle Point, Oregon, on March 6, 1997, and deported to Guatemala on March 25, 1997. The applicant re-entered the United States without inspection on May 10, 1998, and was arrested once again in Eagle Point, Oregon, on February 22, 1999. The applicant's existing removal order was reinstated and CIS records indicate that he departed the United States for Mexico on March 29, 1999. In his initial TPS application, under the name of [REDACTED], the applicant stated that he entered the United States in May 2000.

In any future proceedings before CIS the applicant must submit evidence of the final court disposition of the charges stemming from his three arrests, and any other charges against him.

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.