



U.S. Citizenship
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FILE: [REDACTED] Office: California Service Center Date: APR 30 2007
[SRC 01 204 54441 & WAC 05 256 71250]

IN RE: Applicant: [REDACTED]



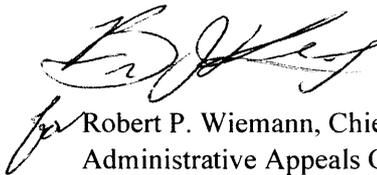
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed an initial TPS application on May 8, 2001, under CIS receipt number SRC 01 204 54441. The Texas Service Center director approved that application on January 28, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 13, 2005, under CIS receipt number WAC 05 256 71250, and indicated that he was re-registering for TPS.

The California Service Center director simultaneously withdrew the applicant's TPS and denied the re-registration application, on August 4, 2006, as the applicant had been convicted of two misdemeanors, and therefore, did not maintain eligibility for TPS. The director noted that final court dispositions, submitted by the applicant in response to a notice of intent to withdraw, reveal that the applicant had two DWI convictions, entered by the Dallas Criminal Court, Dallas, Texas, on March 11, 2000, and on August 25, 2005, respectively.

The director, simultaneously, withdrew the applicant's temporary protected status as the applicant failed to maintain eligibility requirements for TPS. Since there was no appeal available for the re-registration application, the AAO will only consider the appeal of the director's decision to withdraw TPS.

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 for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

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.

The record reveals the following convictions:

- 1) On November 20, 2000, the Criminal Court of Dallas County, Dallas, Texas, convicted the applicant, on a nolo contendere plea, of DWI, a Class "B" misdemeanor. The applicant was sentenced to 30 days confinement and fined \$235.25.
- 2) On November 9, 2005, the Criminal Court of Dallas County, Dallas, Texas, convicted the applicant, on a guilty plea, of DWI, a "Class A" misdemeanor. The applicant was sentenced to 365 days confinement in the Dallas County Jail, and fined \$1000.

On appeal, on behalf of the applicant, counsel states that the applicant's prior attorney failed to advise the applicant of the risks of pleading guilty to a second misdemeanor, to the applicant's detriment. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for action, or inaction, of the applicant's representative.

Counsel also states that the applicant's new attorney has filed a motion to re-open the applicant's criminal court proceedings and is requesting post-conviction relief. With the appeal, counsel submits an Application for A Writ of Habeas Corpus Seeking Relief From Final Misdemeanor conviction, date-stamped "FILED" September 1, 2006; and, photocopies of four photographs depicting the applicant and his family members. Counsel states that he believes that the second misdemeanor will be dismissed, and therefore, the applicant would continue his eligibility for TPS. In effect, counsel requests that a final decision be abated until the Texas Court decides the applicant's request for post-conviction relief.

The court record, however, clearly shows that the applicant was convicted of two misdemeanors, described above. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113

(9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.