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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: ATLANTA, GEORGIA

Date: DEC 03 2007

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 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the District Director, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sudan who was granted Temporary Protected Status (TPS) on December 14, 2002. The director subsequently withdrew the applicant's Temporary Protected Status on July 15, 2005, when it was determined that the applicant had failed to re-register for TPS during the requisite period from October 4, 2004 through December 6, 2004.

On appeal, counsel for the applicant submits a brief and additional evidence.

An alien who has been granted Temporary Protected Status must register annually with the district office or service center having jurisdiction over the alien's place of residence. 8 C.F.R. § 244.17(a).

Temporary Protected Status shall be withdrawn if the alien fails, without good cause, to register annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General. Section 244(c)(3)(c)(A) of the Immigration and Nationality Act (the Act).

The record reveals that the applicant was initially granted Temporary Protected Status (TPS) on May 28, 1998. On November 9, 1999, Sudan was re-designated for TPS. On February 25, 2000, the applicant filed a re-registration application with the Atlanta District Office. The applicant's fingerprint results report revealed that the applicant was arrested in Monroe, Louisiana, on June 26, 1995, and charged with forgery. On March 17, 2000, the applicant was requested to provide the final court disposition of this arrest. The applicant, in response, provided a court document from the Fourth Judicial District Court, Parish of Ouachita, State of Louisiana, indicating that the applicant pled guilty to attempted felony theft, a "Duncan Misdemeanor," and was sentenced to pay a fine of \$400 and to serve one year in the Ouachita Parish Jail.

On June 20, 2000, the District Director, Atlanta, denied the applicant's re-registration application, filed on February 25, 2000, because she found the applicant had been convicted of a felony. On July 21, 2000, the applicant filed an appeal from the denial decision. On appeal, counsel for the applicant provided a document dated July 20, 2000, from the Fourth Judicial District Court, Parish of Ouachita, State of Louisiana, ordering that the applicant's conviction be amended to misdemeanor attempted theft, and the applicant's sentence be amended from one year in the Ouachita Parish Jail to five months in the Ouachita Parish Jail, execution of the jail sentence suspended, and that his probation period be amended from twenty-four months to six months, pursuant to LSA-Cr.P. art. 881. On February 1, 2001, the applicant's conviction on the charge of misdemeanor attempted theft was expunged by the Fourth Judicial District, Parish of Ouachita, State of Louisiana.

On June 20, 2000, a Form I-862, Notice to Appear, was issued ordering the applicant to appear for a removal hearing before an Immigration Judge at a time and date to be determined. On December 19, 2002, an Immigration Judge in Atlanta, Georgia, administratively closed the removal proceedings for TPS consideration.

The applicant's subsequent TPS re-registration application was approved on December 14, 2002, valid until November 2, 2003. The applicant's Temporary Protected Status was subsequently extended to November 2, 2004.

On October 7, 2004, the Secretary of the Department of Homeland Security announced that the Temporary Protected Status designation for Sudan, which expired on November 2, 2004, would be extended for 12 months until November 2, 2005, and that Sudan was re-designated for TPS. Nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who were renewing TPS under this extension were required to re-register for TPS during the 60-day period from October 7, 2004 through December 6, 2004. Nationals of Sudan who were filing for late initial registration for TPS were required to register during the 180-day registration period from October 7, 2004 through April 5, 2005.

Since the applicant had previously been granted TPS, he was required to re-register during the 60-day period from October 7, 2004 through December 6, 2004. The applicant initially submitted his re-registration application on December 27, 2004, but the Form I-821, Application for Temporary Protected Status, was not properly filed until June 3, 2005.

On May 6, 2005, the district director issued a Notice of Intent to Withdraw the applicant's Temporary Protected Status because the applicant failed to re-register for TPS during the 60-day re-registration period from October 7, 2004 through December 6, 2004.

The district director denied the re-registration application on June 24, 2005. It is noted that the district director incorrectly stated in the denial decision that the applicant failed to re-register during the six-month period from August 25, 2004 through February 21, 2005, which applied to TPS registrants from Liberia. As previously stated, the re-registration period for Sudanese nationals was from October 7, 2004 through December 6, 2004.

On July 15, 2005, the district director issued another decision withdrawing the applicant's Temporary Protected Status because the applicant failed to re-register for TPS during the re-registration period from October 7, 2004 through December 6, 2004.

On appeal, counsel for the applicant asserts that the applicant has applied for, and been granted, TPS "since 1998." Counsel further asserts that the applicant mailed his re-registration application with the requisite fees to the Atlanta District Office on December 6, 2004. Counsel explains that when the applicant did not receive a filing receipt in the mail, he spoke with a Citizenship and Immigration Services (CIS) representative at the National Customer Service Center, and was mailed a date-stamped copy of his TPS application in the mail reflecting a receipt date of December 27, 2004. Counsel further explains that when the applicant received the Notice of Intent to Withdraw Temporary Protected Status dated May 6, 2005, he went to the Atlanta District Office to inquire about the status of his case and was advised to re-submit his original application, which he did on May 26, 2005.¹ Counsel contends that the district director erred in withdrawing the applicant's Temporary Protected Status because the applicant timely filed his re-registration application during the requisite period from "August 25, 2004 to February 21, 2005."

¹ This is probably the application that was properly filed and receipted on June 3, 2005.

In this case, it appears that the applicant attempted to file a re-registration application during the requisite period, and it does not appear that the applicant “willfully” failed to re-register during the period from October 7, 2004 through December 6, 2004. Therefore, the director’s finding that the applicant failed to re-register for the period from October 7, 2004 through December 6, 2004 will be withdrawn. However, the record reveals that the applicant was erroneously granted 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 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).

The record reveals that the applicant was arrested in Monroe, Louisiana, on June 26, 1995, and charged with attempted felony theft. The applicant pled guilty to this charge in the Fourth Judicial District Court, Parish of Ouachita, State of Louisiana, on October 12, 1995. He was sentenced to spend one year in jail (execution of jail sentence suspended), placed on 24 months supervised probation, and ordered to pay a fine of \$400. On July 20, 2000, the court amended the applicant’s felony conviction to misdemeanor attempted theft. His sentence was amended from one year in the Ouachita Parish Jail to five months in the Ouachita Parish Jail (execution of jail sentence suspended), and probation was amended from 24 months to six months, pursuant to LSA-Cr.P. art. 881. On February 1, 2001, the court expunged the applicant’s misdemeanor conviction in accordance with Article 691 of the Louisiana Code of Criminal Procedure. Although the court amended the applicant’s felony conviction to a misdemeanor, and subsequently expunged the applicant’s conviction on February 1, 2001, the fact remains that the applicant pled guilty to a felony.

Under the current statutory definition of “conviction” provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. Any subsequent action that overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes, notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals (BIA) reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains “convicted” for immigration purposes.

There is no indication in this matter that the court’s action setting aside the applicant’s conviction was based on the merits of the case. Indeed, counsel did not petition for amendment of the applicant’s conviction until a prior TPS application was denied on June 20, 2000, due to his felony conviction. Therefore, pursuant to the above precedent decisions, no effect is to be given to such action. The applicant is ineligible for TPS due to his felony conviction, and his Temporary Protected Status must be withdrawn for this reason. 8 C.F.R. § 244.14(a)(1).

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 and the applicant's Temporary Protected Status is withdrawn.