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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 13 2007

[EAC 99 188 50384]

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:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office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

The applicant is a citizen of Honduras 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 application and denied the re-registration application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits the requested court documents.

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).

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.

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)(i)(I) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The record reveals that the applicant filed a TPS application during the initial registration period on November 30, 1999, under Citizenship and Immigration Services (CIS) receipt number EAC 99 198 50384. The Director, Nebraska Service Center, approved that application on March 26, 2001.

The record reveals the following offenses:

- (1) On May 27, 2001 the applicant was arrested by the Alexandria, Virginia Police Department for "Assault and Battery – Family Member."

Pursuant to a letter dated November 9, 2006, the applicant was requested to submit the final court disposition for the charge detailed above. The applicant failed to respond to the notice.

The director withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record. The applicant was also informed of the following offenses:

- (2) On April 12, 1998, the applicant was arrested by the Alexandria, Virginia Police Department for "DUI."
- (3) On April 5, 2005, the applicant was arrested by the Port Richey, Florida Police department for "Shoplifting."

On appeal, the applicant submits the requested court documentation, which reveals:

- (1) On June 25, 2001, the "Assault and Battery – Family Member" charge was ordered nolle prosequi on the prosecution's motion.
- (2) On May 5, 1998, the applicant pled guilty to "DUI", a misdemeanor and a charge for "Hit and Run" was ordered nolle prosequi on the prosecution's motion.
- (3) On September 7, 2005, the applicant entered a plea of nolo contendere to "Petit Theft" a misdemeanor.

The applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested by the Pasco County Sheriff's Office on September 13, 2007 for "DUI Alcohol or Drugs 1st Off." The final disposition for this arrest is not in the record. CIS must address this arrest and any conviction in any future proceedings.

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.