



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[EAC 01 231 61971]

Office: VERMONT SERVICE CENTER

Date: JUN 05 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on February 28, 2003. The director subsequently withdrew the applicant's Temporary Protected Status on March 16, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors.

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).

Based upon United States Citizenship and Immigration Services (USCIS) records, the director requested that the applicant submit final court dispositions stemming from his arrest in January of 2003 and December of 2004, at which time he had been charged with retail theft and contempt, respectively. The applicant responded by submitting the final court dispositions on December 5, 2005. The director determined that the applicant had been convicted of two or more misdemeanors, and subsequently withdrew the approval of the TPS application on March 16, 2006.

On appeal, counsel states that the applicant has been convicted of only one misdemeanor.

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.

Section 101(a)(48)(A) of the Act defines "conviction."

The term *conviction* means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

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.

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.

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- On June 17, 2003, the court in Lancaster, Pennsylvania, ordered the applicant to pay a fine & court costs of \$437.84 stemming from his criminal charge of retail theft;
- On November 3, 2003, the applicant was convicted of driving, attempting to drive a vehicle while under the influence of drugs or alcohol, and fined \$305.00 by the District Court of Maryland for Harford County; and,
- On December 27, 2004, the applicant was charged with contempt of court by the Sheriff's Office, Bel Air, Maryland.

On appeal, counsel states that the applicant was convicted of driving, attempting to drive a vehicle while under the influence, a misdemeanor. Counsel further states that the contempt charge did not result in a conviction and was only a reflection of the extension of the applicant's probation in the above noted case. Counsel also states that the applicant's criminal record does not show that he was convicted of retail theft, but that he was arrested and paid a fine.

In the instant case, the record reveals that on June 17, 2003, the applicant was fined \$437.84 in fines and court costs on one count of retail theft. It is stated in the court document supplied by the applicant: "For Individuals: This dissemination of Criminal History Record Information is only on arrests or actions taken by this Department and that a more complete Criminal History Record, if in existence, would be maintained by the Central Repository"

The applicant has failed to provide a complete court disposition of his criminal convictions sufficient to determine his criminality for immigration purposes. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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.