



U.S. Citizenship
and Immigration
Services

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FILE:

Office: California Service Center

Date: SEP 04 2007

[WAC 05 096 80041]
[SRC 99 151 50370]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn and an application for re-registration was denied by the Director, California Service Center. The matter 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 record reveals that the applicant filed an initial TPS application on March 29, 2000, under CIS receipt number SRC 99 151 50370. The Director, Texas Service Center, approved that application on December 22, 1999.

It is noted that the record reveals that the applicant filed a previous TPS application (under [REDACTED] on January 21, 1999, under CIS receipt number SRC 99 114 52989. That application was denied for abandonment on July 2, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, under CIS receipt number WAC 05 096 80041, and indicated that he was re-registering for TPS.

The Director, California Service Center, simultaneously withdrew TPS, and denied the re-registration, on May 6, 2006, as final court dispositions revealed that the applicant had two or more misdemeanor convictions, and therefore, was ineligible for TPS.

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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.

In response to the director's notice of intent to withdraw, the applicant submitted the final court dispositions which reveal the following:

- 1) On January 11, 1999, the Circuit/County Court, in and for Broward County, Florida, convicted the applicant, on a nolo contendere plea, of Count 1: Driving Under Influence, a misdemeanor; and, Count 2: DRIV LIC SUSP., a misdemeanor. The applicant was sentenced to 6 months probation, plus fines, and additional restrictions.
- 2) On January 25, 2006, the Circuit/County Court, in and for Broward County, Florida, convicted the applicant, on a nolo contendere plea of Count 1: Violating MXXD316193 1, DRIVING UNDER INFLUENCE, a misdemeanor. The applicant was sentenced to 9 months probation, plus fines, and additional restrictions.

The applicant is ineligible for TPS due to his record of at least 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 withdraw TPS, and deny the re-registration application must be affirmed for this reason.

As noted above the record reveals that the applicant apprehended on entry was placed in Removal Proceedings (under A72 811 390), and ordered removed, *in absentia*, to Honduras, on September 8, 1994, by the Immigration Judge.

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.