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U.S. Department of Homeland Security  
20 Mass. Avenue, N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 17 2007

consolidated

[EAC 02 183 52210]

IN RE:

Applicant

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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 Director, Vermont Service Center (VSC), withdrew the approval of the application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the approval of the application because the applicant had been convicted of simple possession of 0 to 2 ounces of marijuana in the state of Texas.

On appeal, counsel for the applicant asserts that approval of the applicant's TPS application should not be revoked because the record does not establish that the applicant was convicted of possession of more than 30 grams of marijuana.

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.

Section 212(a) of the Act provides a list of aliens who are ineligible to receive visas and ineligible to be admitted to the United States. Specifically, § 212(a)(2)(A)(i)(II) states that any alien convicted of a violation of any law or regulation of a state relating to a controlled substance is inadmissible.

Section 244(c)(2)(A) of the Act provides that convictions relating to drug offenses under § 212(a)(2)(C) are not waivable for TPS applicants, unless the conviction involved a single offense of simple possession of 30 grams or less of marijuana. The TPS regulations at 8 C.F.R. § 244.3(c) provide that Citizenship and Immigration Services (CIS) may not waive the criminal and drug-related provisions of § 212(a) of the Act, including paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses).

The burden of proof is on the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that on December 13, 1996, in Bell County Court, in Bell County, Texas, the applicant pled guilty to one count of simple possession of less than two ounces of marijuana and was sentenced to 40 days in jail and ordered to pay a \$100 fine. On appeal, counsel submits documents indicating that, at the time of his arrest, the applicant had in his possession under 2 oz. of suspected marijuana.

Counsel asserts that the applicant is not ineligible for his conviction because the record is unclear as to the amount of marijuana the applicant was convicted of possessing. Counsel asserts that CIS cannot conclusively establish that the applicant's conviction was for possession of greater than 30 grams of marijuana. Counsel erroneously cites to § 237(a)(2)(B), a section of the Act that is not applicable in these proceedings. Section 237(a)(2)(B) provides for the removal of aliens, in and admitted to the United States, who are within one or more classes of deportable aliens. In removal proceedings, the government bears the burden of proving by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true. Counsel asserts that it is CIS' burden to prove that the applicant was convicted of possession of more than 30 grams of marijuana.

In determining whether the applicant is eligible for TPS, we look to § 244(c)(2)(A)(iii) of the Act, not to § 237(a), as these are not removal proceedings. The burden is on the applicant, not CIS, to show that he is eligible for TPS, that he is admissible, and, that he was not convicted of an offense that may not be waived for TPS applicants. In other words, it is the applicant's burden to show that he was convicted of a single offense of simple possession of 30 grams or less of marijuana and that he is otherwise eligible for TPS.

One ounce equals approximately 28.349 grams and two ounces equals approximately 56.699 grams. The record does not contain documents that establish the specific amount of marijuana the applicant was convicted of possessing. It simply contains documents showing that it was less than two ounces. It is unclear whether the applicant possessed more than 30 grams or less than 30 grams of marijuana. The precise amount of marijuana that the applicant was convicted of possessing cannot be determined from the record. Because the applicant provided no proof that his conviction was for possession of 30 grams or less of marijuana, he has not met his burden, and is therefore, ineligible for TPS due to his conviction.

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 that burden.

**ORDER:** The appeal is dismissed.