



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 203 50450]

OFFICE: Vermont Service Center DATE: APR 24 2008

INRE: 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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, on April 29, 2003.

The director withdrew the applicant's TPS and denied the re-registration application on October 29, 2007 when it was determined that the applicant had failed to submit the final court documentation for criminal offenses committed in the United States.

On appeal, the applicant states that there are some errors in the director's decision regarding the charges against him. He further elaborates on the charges against him and asks CIS to grant him the opportunity to continue under TPS.

The regulation at 8 C.P.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

Section 244(c) of the Act, and the related regulations in 8 c.P.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)(BXi) 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.

The record shows the following:

1. On July 23, 2002, the applicant was arrested by Norwalk Sheriffs Office, Agency Case **No. ___** and charged with Count (1) DUI - Alcohol/Drugs. The applicant states on appeal that this charge is correct; however, the record does not contain a final court disposition for this charge.

On appeal, the applicant states all of the charges in the director's decision were not correct; however, the Docket Report, County of Orange shows the following:

2. On December 20, 2005, Original Complaint filed by Orange County District Attorney, in Superior Court of the State of California, County of Orange, Docket Report, Case No. **_____**, date of violation: December 18, 2005, the applicant was charged with Count (1) a felony charge of 11377(a) - Possess Controlled Substance; Count (2) a misdemeanor charge of 23152(a) - DUI Alcohol Drugs; Count (3) a misdemeanor charge of 20002(a) - Hit and Run Property Damage; and Count (4) misdemeanor charge 20002(a) - Hit and Run Property Damage. On February 10, 2006, the applicant pleaded guilty as to Count(s) 1, 2, 3, and 4. Imposition of sentence was suspended and the applicant was placed on 3 years Formal Probation on the following terms and conditions: Serve 180 days Orange County Jail as to Count (1); paid \$390 in fine as to Count (2) and driver's license suspended for 18 months; RSTN for Count (3) and (4).

The court disposition in the record clearly establishes that the applicant has been convicted of a felony and two or more misdemeanors. Accordingly, the applicant is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the district director's decision to deny the TPS application for this reason will be affirmed.

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.