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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

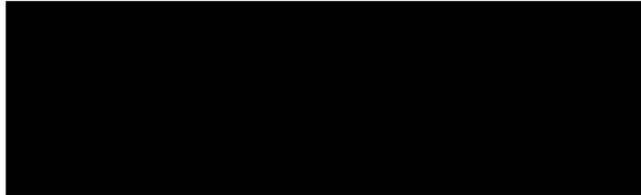
Date:

[WAC 07 008 52188, *appeal*]
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IN RE:

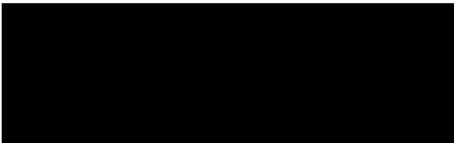
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is stated to be a native and citizen of El Salvador who was granted TPS on October 7, 2003. The director subsequently withdrew the applicant's status and denied the re-registration application on September 8, 2006, when it was determined that the applicant had been convicted of a felony in the United States.

On appeal, counsel argues that the applicant's conviction for the possession of marijuana was assessed under the California deferred adjudication program and does not constitute a conviction for immigration purposes as long as the "probatory" period is successfully completed and the initial charges are dismissed.

On appeal, counsel stated that he would submit a brief and/or additional evidence to the AAO within 30 days; however, he has not done so. Therefore, the record is considered complete.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. §244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R. §244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. §244.4(a).

The regulations at 8 C.F.R. §244.1(3) define "felony" and "misdemeanor" as:

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 reflects the following offenses:

(1) On June 24, 1993, the applicant was convicted by a Judge of the Superior Court of California, County of Los Angeles, California, of possessing marijuana for sale, 11359 H&S, a felony. (Case No. [REDACTED])

(2) The record contains a letter from the City of Houston Police Department dated April 15, 2005, revealing that the applicant was convicted by a Judge in [REDACTED] of driving while intoxicated, a misdemeanor.

On appeal, counsel argues that the applicant's conviction for the possession of marijuana was assessed under the California deferred adjudication program and does not constitute a conviction for immigration purposes as long as the "probatory" period is successfully completed and the initial charges are dismissed. Counsel has provided no evidence to establish that the applicant received any special consideration under a first offender or other special program and that his initial charges were ultimately dismissed.

The applicant is ineligible for TPS due to his record of his felony conviction, 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 is affirmed.

Beyond the decision of the director, 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. There is no waiver available to an alien found inadmissible under this section. *See* 8 C.F.R. § 244.3(c)(1).

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.