



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date:

AUG 12 2008

[EAC 07 113 51663, *appeal*]

[SRC 99 252 53002]

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant claims to be a native and citizen of Honduras. She was granted TPS on May 19, 2000. The director subsequently withdrew the applicant's status because of her written statement that she was guilty of the possession of cocaine.

On appeal, counsel states:

Temporary Protected Status ("TPS) was erroneously denied SOLELY for an arrested which resulted in a 'NOLLE PROSSE.'" It is clear that under United States Immigration laws, a NOLE PROSSE is NOT a conviction for Immigration purposes. Matter of 22 I&N Dec. 1378 (BIA 2000). In additionally, the provision cited by CIS in its decision (Section 101(a)(48)(A) of the Immigration Act) specifically states: "...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 ..."

In this case, there was NO conviction or formal judgment of guilt, and there was NO withhold of adjudication! Therefore, to utilize this language in the instant case is not appropriate. Moreover, to utilize any alleged statement by , as part of this Nolle Pross agreement, is similarly not appropriate. In light of the above, the CIS decision of February 13, 2007 should be reversed, and should be granted TPS.

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.

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.

The record shows that on March 30, 2004, the applicant was arrested by an officer of the Greenacres Department of Public Safety in Florida, while a passenger in a vehicle that was stopped for speeding. The driver of the vehicle was arrested for not having a valid driver's license and the applicant was transported to a hospital because she said she was having stomach pains. The vehicle was impounded and searched. The officer found 2.2 grams (about 15 pieces) of crack cocaine and 3.6 grams of powder cocaine in the applicant's handbag along with \$1,091 in cash. The applicant was arrested at the hospital for the possession of cocaine and the possession of crack cocaine. Her Palm Beach Sheriffs Office booking card dated March 31, 2004, reflects that she was charged with the possession of cocaine with intent to sell and the possession of crack cocaine with intent to sell, both felony violations of Florida Statute 893.13(1A).

On June 16, 2004, the applicant met with a Pretrial Officer of the State of Florida, Department of Corrections and was informed that she had been charged with the possession of cocaine. The applicant signed a statement that she was guilty of possessing cocaine. (Information No. [REDACTED])

On December 13, 2004, the applicant was enrolled in a Pretrial Intervention Program and signed a deferred prosecution agreement under Docket # [REDACTED]. On January 17, 2006, an Assistant State Attorney informed the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida Criminal Division that although there was probable cause for arrest and charge of the defendant (applicant), the State was entering a Nolle Pros in her case and that she had successfully completed the Pre-Trial Intervention Program. (Case No. [REDACTED])

An alien is inadmissible if he or she 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.

Counsel argues that to utilize any alleged statement by [REDACTED] as part of this Nolle Pross agreement, is not appropriate. However, the actual statement by [REDACTED] is a matter of record. Although the applicant was not prosecuted and convicted of the possession of cocaine with intent to sell and the possession of crack cocaine with intent to sell in this case, she admits having committed the crime of the possession of cocaine. Therefore, she is not admissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, and is ineligible under the provisions of section 244(c)(2)(B)(i) of the Act. Consequently, the director's decision to withdraw TPS is affirmed for this reason.

Beyond the decision of the director, the applicant has not established that she is a national or citizen of Honduras. The record does not contain any photo identification such as a passport or national identity document to establish her nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(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.