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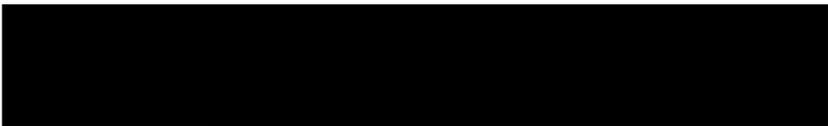
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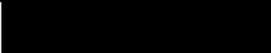
U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 12 2008

[SRC 99 182 52123]



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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: 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant claims to be 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 the director denied the application as it was determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

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.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

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 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).

The North Carolina Computerized Criminal History response dated March 22, 2005, reveals that on April 27, 2004, the applicant was arrested by the Sheriff's Office in Sampson County, North Carolina for trafficking by possessing drugs and trafficking by transporting drugs, both felonies and maintaining vehicle/ dwelling for controlled substance, a misdemeanor. It appears that on August 30, 2004, in the Sampson County Superior Court in Clinton, North Carolina, the applicant pled guilty to a lesser charge of possession with intent to sell/distribute cocaine and trafficking in marijuana, a felony. The applicant was sentenced to serve six to eight months, ordered to pay a fine and placed on supervised probation for two years. The district attorney dismissed the remaining offenses. Docket no. [REDACTED]

On September 2, 2005, the director issued a Notice of Intent to Withdraw TPS, which advised the applicant of his arrest on April 27, 2004. The applicant was requested to submit the final court dispositions for all arrests including his arrest on April 27, 2004. In a response dated October 1, 2005, the applicant requested additional time in which to submit the requested disposition. The applicant, however, failed to submit the requested disposition prior to the issuance of the director's decision.

The director withdrew the applicant's TPS on May 11, 2006.

On appeal dated June 12, 2006, counsel asserts that he is in the process of investigating “regarding whether or not he was correctly or incorrectly convicted of the charges recited in your letter addressed to him.” However, more than 18 months later, no additional correspondence has been presented by counsel or the applicant.

Counsel’s assertion, is not supported by the record as the director’s decision to withdraw the applicant’s TPS was not based on a conviction, but rather the applicant’s failure to provide the requested court disposition for his arrest on April 14, 2004.

As the record fails to contain the actual court disposition for the offenses noted above, it cannot be determined that the applicant was convicted of a felony. Nevertheless, the applicant has the burden to establish, with *affirmative evidence*, that these offenses were either dismissed or were in error. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director’s decision to withdraw TPS will be affirmed.

Finally, the record reveals that the applicant was ordered removed *in absentia* by an immigration judge on August 6, 1997, under alien registration number [REDACTED]. On September 25, 1997, a Form I-205, Warrant of Removal/Deportation, was issued by the District Director, Harlingen, Texas.

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 from the withdrawal of the TPS application is dismissed.