



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 02 2008

[WAC 99 161 52778]

[WAC 05 103 70855]

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 Vermont Service Center. 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 applicant's previously granted Temporary Protected Status (TPS) and denied the application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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 director withdrew the applicant's TPS status and denied the re-registration application on because the applicant had been convicted of domestic battery with corporal injury, violation of a protection order and false imprisonment, three misdemeanors.

On appeal, the applicant states:

It has been one year I sent paper of my case that everything has been finish. My convicted is only one and I send every paper of evidence in this case right now I'm appearing because they didn't find me a suspect.

The CSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The VSC Director should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provides for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

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 designated by the Attorney General 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 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 April 19, 2005, the applicant was convicted by a Judge in the Superior court of the State of California, County of Orange, of violation of a protection order, a misdemeanor. (Case Number [REDACTED])
- (2) On April 19, 2005, the applicant was convicted by a Judge in the Superior court of the State of California, County of Orange, of violation of domestic battery with corporal injury and false imprisonment, both misdemeanors. (Case Number [REDACTED])

The applicant's Federal Bureau of Investigation fingerprint results report shows the following:

- (3) On May 27, 2005 the applicant was arrested by the Sheriff's office in Santa Ana, California, under a warrant for one count of corporal injury of a spouse. It is not clear whether this relates to one of the offenses in Numbers (1) or (2) above.

The applicant's Santa Ana (California) Police Department local criminal history transcript shows the following:

- (4) On March 27, 2000, the applicant was arrested for "drunk driving." (Case Number [REDACTED])
[REDACTED] The final disposition of this arrest is unknown.

The applicant is ineligible for TPS due to his record of three misdemeanor convictions, detailed as items number (1) and (2) 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.

The applicant has not submitted court dispositions for his arrests for items numbers (3) and (4) listed above. Accordingly, he is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that, in removal proceedings held on October 23, 1997, an Immigration Judge in Los Angeles, California, granted the applicant voluntary departure from the United States on or before January 21, 1998, with an alternate order of deportation if the applicant should fail to depart as ordered. There is no evidence in the record that the applicant departed from the United States as required. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the District Director of the Los Angeles, California, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on July 29, 1998.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.