



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JAN 02 2008
[EAC 01 234 55286]
[EAC 05 223 79012]

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 office that originally decided your case. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn, and the re-registration application denied, by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador 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 because he found the applicant was no longer eligible due to two misdemeanor convictions in the United States.

On appeal, the applicant asserts through counsel that his convictions should not be considered misdemeanors, and that he is eligible for TPS.

The regulation at 8 C.F.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.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).

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 reveals the following offenses:

- (1) On November 10, 2004, the applicant was charged with Unlawful Conduct in the criminal court of Kings, New York. (Case No. [REDACTED]) The record indicates the applicant subsequently pled guilty but the actual court disposition for this charge has not been provided.
- (2) On February 23, 2005, the applicant pled guilty to Unlawful Conduct in the criminal court of Kings, New York. (Case No. [REDACTED])
- (3) On January 14, 2005, the applicant was charged with Violating State Sanitary Code in the criminal court of Kings, New York. (Case No. [REDACTED]) The record indicates the applicant subsequently pled guilty but the actual court disposition for this charge has not been provided.
- (4) On March 30, 2005, the applicant pled guilty to Disorderly Conduct, § 240.20, in the criminal court of Kings, New York. (Case No. [REDACTED])

The record also reveals that the applicant has a warrant pending for several charges which have not been cleared.

On appeal, the applicant asserts that his convictions should not be viewed as misdemeanors.

The applicant has not provided the actual court dispositions for the charges listed above. The applicant also failed to reveal these charges on his Form I-821 when filing for TPS. The applicant did not respond to the director's request to provide the actual court dispositions for any arrests or charges on his record. Since an alien is not eligible for TPS if they have been convicted of two or more misdemeanors in the United States, ascertaining the final disposition for all charges on his record is a line of inquiry material to his eligibility. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The applicant has failed to provide any evidence revealing the actual court dispositions of his arrests detailed above. The applicant 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). Consequently, the director's decision to deny the 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.