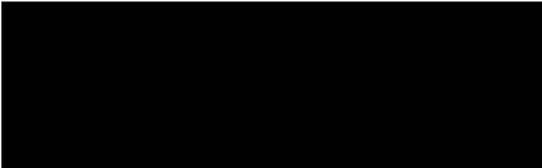


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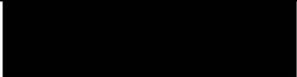


U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



[SRC 99 12953148]

OFFICE: VERMONT SERVICE CENTER

DATE: JAN 10 2008

INRE:

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

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 director withdrew the applicant's TPS because he found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act due his conviction of assault family violence.

On appeal, the applicant asserts that he never received the Notice of Intent to Withdraw TPS that was sent to the representative's address. The applicant provides an additional copy of the court disposition relating to his conviction on December I, 2003.

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 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. 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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The director may withdraw the status of an alien granted TPS 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 record reveals that on June 24, 2003, the applicant was arrested under the **alias** ___ by the Lewisville Police Department in Texas for assault causing bodily injury on family member. On December 1, 2003, the applicant pled *nolo contendere* to the charge of assault family violence, a misdemeanor. The applicant was sentenced to serve 300 days in the county jail and ordered to pay a fine. Imposition of the jail sentence was suspended and the applicant was placed on probation for 16 months. Cause no. _____.

The record also reveals that on January 20, 2006, the applicant was arrested under the alias _____ by the Lewisville Police Department in Texas for aggravated sexual assault on a child. Cause no. _____

On September 21, 2005, the director issued a Notice of Intent to Withdraw TPS, which requested the applicant to submit the final court disposition for his June 24, 2003 arrest. The applicant, in response, submitted the requested court disposition that detailed the misdemeanor conviction.

On June 14, 2006, the director issued a new Notice of Intent to Withdraw TPS, which advised the applicant of his arrest on June 24, 2003 as well as his arrest on January 20, 2006. The notice, which was sent to the address of the representative, requested that the applicant submit the final court dispositions for each arrest. No response, however, was received prior to the issuance of the director's decision.

The director, in withdrawing the approval of the TPS application, concluded that the applicant's conviction of assault family violence constituted a crime involving moral turpitude and found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The record contains the criminal complaint from the Denton County Municipal Court, which indicates that the applicant "did then and there intentionally and knowingly and recklessly cause bodily injury to [the victim] by striking or pulling [the victim] with the defendant's hand."

The state of Texas held that a misdemeanor conviction of assault with bodily injury to a spouse is a crime involving moral turpitude. *Matter of Deanda-Ramo*, 23 I. & N. Dec. 597 (BIA 2003). Therefore, the applicant's conviction for this offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I) of the Act. 8 C.F.R. § 244.3(c)(1), 8 U.S.C. § 1254(c)(2)(iii)(I). Therefore, in accordance with 8 C.F.R. § 244.14(a)(1), the director's decision to withdraw the TPS application is affirmed.

Furthermore, the applicant has failed to provide any evidence revealing the final court disposition of his arrest on January 20, 2006. 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 the TPS application for this reason will be affirmed.

The application will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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.