



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUL 07 2009**

[WAC 03 039 54332]

[REDACTED]

consolidated]

INRE:

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. Wie, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 for TPS due to his misdemeanor convictions, and was inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant asserts through counsel that he only has one misdemeanor, and that the other convictions on his criminal record are someone else with a similar name.

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.

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 reveals the following offenses:

- (1) On May 11, 1995, the applicant was convicted of Driving Under the Influence of Alcohol or Drugs in Vehicle. Case No. _____
- (2) On August 7, 1998, the applicant was convicted of Driving With a Suspended or Revoked License. Case No. _____
- (3) On October 25, 1999, the applicant was arrested by the Riverside Sheriffs Office, California, for Driving under the influence of Alcohol or Drugs.
- (4) On April 12, 2002 the applicant was arrested by the police department, Huntington Park, California, for Possession of less than one ounce of Marijuana, and was subsequently convicted of this charge on April 28, 2003. Case No. _____
- (5) On April 23, 2003, the applicant was arrested by the Los Angeles Police Department, California, for Driving Without a License, and was subsequently convicted of this charge on April 24, 2003. Case No. _____
- (6) On February 28, 2006, the applicant was arrested by the Los Angeles Police Department, California, for Battery of Spouse.
- (7) On August 21, 2006, the applicant was convicted of Driving With a Suspended License. Case No. _____

On appeal, the applicant asserts through counsel that he only has one misdemeanor conviction, and the other convictions on his record are a mistaken identity.

The AAO would note that the defendant himself provided the final court dispositions for Nos. 1,2,4,5, and 7 above, and now claims they are not his. The applicant's criminal record was revealed by an FBI fingerprint check. Based on these facts the AAO rejects the applicant's assertion that he only has one misdemeanor and that other charges are mistaken identity.

The applicant is ineligible for TPS due to misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction detailed in No.4 above. Since the applicant's drug conviction involved simple possession of less than 30 grams of marijuana a waiver is available pursuant to section 244(c)(2)(A)(iii)(II). The record does not reflect that the director advised the applicant of the availability of a waiver. Regardless, even if a waiver was granted, the applicant would remain ineligible due to his record of at least five misdemeanor convictions as detailed above. There is no waiver available for the eligibility requirements detailed in section 244(c)(2)(B)(i) INA.

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.