

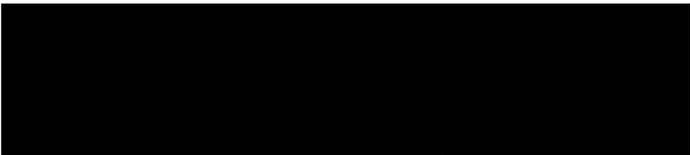


**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 02 2008

[EAC 08 06251142, *appealj*
[SRC 99 195 53016]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The approval of the application was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 approval of the application because the applicant had failed to provide the final court dispositions for his arrest on June 25, 2002 for driving under the influence and his arrest on June 5, 2005 for acquiring a license plate for the purpose of concealing the identity of a vehicle and driving under the influence of alcohol.

On appeal, the applicant submits documentation relating to the two arrests cited by the director and requests that his application be approved.

The VSC 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. He should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide 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 is eligible for TPS **if** the 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 that 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. 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(3) 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 September 19, 2002, the applicant was convicted of driving under the influence of alcohol or drugs, a violation of Florida Statute 316.193, by a Judge in the County Court for Dade County, Florida, a misdemeanor. (Case Number [REDACTED])

- (2) On June 5, 2005, the applicant was arrested by the Gwinnett County Police in Georgia and charged with the unlawful use of a tag, a violation of Georgia Code Section 40-2-5, and driving under the influence, a violation of Georgia Code Section 40-06-391. On October 3, 2005, it was determined that the unlawful use of a vehicle tag charge should not be pursued, (Nolle Prosequi). However, on October 3, 2005, the applicant was convicted of driving under the influence, a violation of Georgia Code Section 40-60-391 by a Judge of the Court of Gwinnett County, Georgia, a misdemeanor. (Court Case Number ● ● ● ● ●)

The applicant is ineligible for TPS due to his record of two misdemeanor convictions detailed above. Section 244(c)(1)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS is 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.