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U.S. Department of Homeland Security
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Washington, DC 20529

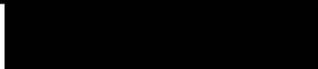


U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

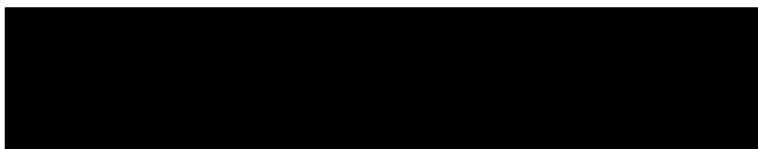
Date: MAR 11 2008

[EAC 07 121 51627 appeal]

[EAC 9921351812]

INRE:

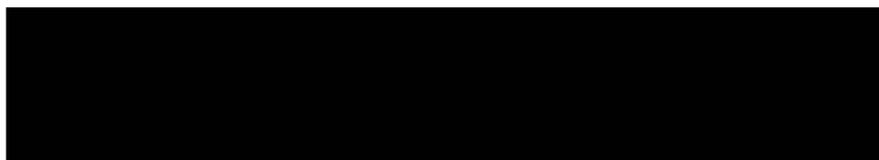
Applicant:



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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and the **re-registration** application was denied. The case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted TPS on July 31, 2000. The director subsequently withdrew the applicant's status on March 13, 2007, when it was determined that the applicant had failed to submit court dispositions for his arrests on February 6, 2005 for soliciting prostitution and on November 19, 2005 for driving under the influence of alcohol.

On **appeal**, the applicant submits a Criminal History **Request that he sent on** March 23, 2007, to the Washington, D.C. Metropolitan Police Department under the name [REDACTED]. The document was certified by the person who searched the record on March 23, 2007, **indicating that no records** were found under this name file search. He also submits a final report dated January 8, 2007, from the Alexandria Alcohol Safety Action Program (ASAP), in Alexandria, Virginia, addressed to the Alexandria General District Court reporting **that** the applicant had successfully completed program requirements.

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. The VSC Director 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 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) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on February 6, 2006, he was arrested under the name [REDACTED] for soliciting prostitution by the Washington D.C. Police Department. (Agency Case [REDACTED]).
- (2) The applicant's FBI fingerprint results report shows that on November 19, 2005, he was arrested under name [REDACTED] by the Alexandria Police Department, Alexandria, Virginia and charged with driving under the influence of alcohol. (Agency Case [REDACTED]).

On appeal, the applicant submitted a Criminal History Request that he sent on March 23, 2007, to the Washington, D.C., Metropolitan Police Department under the name [REDACTED]. The document was certified by the person who searched the record on March 23, 2007, indicating that no records were found under this name file search. This document is of little probative value in this proceeding as the records search was evidently conducted for a name other than the name under which he was arrested. (Item # 1 above).

He also submits a final report dated January 8, 2007, from the Alexandria Alcohol Safety Action Program (ASAP), in Alexandria, Virginia, addressed to the Alexandria General District Court reporting that the applicant had successfully completed program requirements. This document is also of little probative value as it is not the court disposition document for his arrest for driving under the influence listed as item # 2 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 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.