

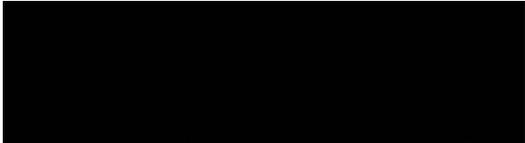


U.S. Citizenship
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FILE:

Office: VERMONT SERVICE CENTER

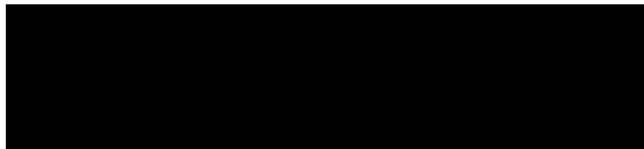
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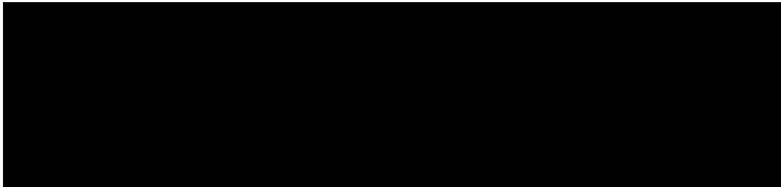
IN RE:

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 Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS) and denied his application for re-registration on March 2, 2007. The director reopened the matter on motion, issued a Notice of Intent to Deny on August 10, 2007, and the again withdrew the applicant's TPS and denied his application for re-registration on April 8, 2008. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted TPS on January 3, 2002. The director subsequently withdrew the applicant's status and denied the re-registration application on April 8, 2008, when it was determined that the applicant had failed to submit final court dispositions for his May 26, 2002 arrest for driving under the influence of alcohol/drugs resulting in bodily injury and his May 9, 2004 arrest for battery on a police officer with injury.

On appeal, counsel argues that the applicant did not receive a Notice of Intent to Withdraw TPS dated January 24, 2007.

Counsel stated that he would submit a brief and/or additional evidence to the AAO within 30 days; however, he has not done so. Therefore, the record is considered complete.

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 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 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) On May 29, 2002, the applicant was convicted by a Judge of the Superior Court of the County of Los Angeles, State of California, of driving while having a 0.08 or higher blood alcohol level, a violation of Vehicle Code Section (VCS), 23152(b), a misdemeanor. (Case No. [REDACTED])
- (2) On August 2, 2004, the applicant was convicted by a Judge of the Superior Court of the County of Los Angeles, State of California of "OBSTRUCT/RESIST EXECUTIVE OFCR," a violation of Section 69 of the California Penal Code, a felony. (Case No. [REDACTED])
"Section 69. Every person who attempts, by means of any threat or violence to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty."

On appeal, counsel argues that the applicant did not receive a Notice of Intent to Withdraw (NOIW), TPS dated January 24, 2007. The applicant did receive a subsequent NOIW dated August 10, 2007 and counsel responded to that notice on September 10, 2007. The outcome of this case is not based on whether or not the applicant responded to a NOIW. It is being decided based upon his criminal record as reflected in the record of proceedings.

The applicant is ineligible for TPS due to his record of a felony conviction, 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 withdraw TPS and deny the re-registration application 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.