



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: SEP 02 2008

[SRC 99 263 53039]

IN RE:

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was withdrawn by the Director, Vermont Service Center.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 is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on June 21, 2000.

On November 14, 2007, the director notified the applicant of an intent to withdraw his TPS when a criminal history check revealed that the applicant was convicted of a felony or two or more misdemeanors committed in the United States. The director afforded the applicant thirty days to submit final court dispositions regarding his arrests and evidence to overcome the grounds for withdrawal. On March 7, 2008, the director withdrew the applicant's TPS after he determined that the applicant had failed to include all of the requested dispositions with evidence submitted. The applicant has now submitted an appeal from the director's decision.

On appeal, counsel states that many of the arrests in questions are old and the records are not readily available. Counsel states further that he was able to obtain some of the arrest reports and final disposition reports, not all of them could be obtained within 30 days. Counsel also states that a request for additional time was not granted by the Service Center; however, counsel indicated on the Form I-290B, Notice of Appeal or Motion, that a brief or additional evidence will be submitted to the AAO within 30 days. On August 21, 2008, the AAO sent a facsimile transmission (FAX) to counsel requesting that a copy of the additional evidence and/or brief be sent to the AAO within five business days, along with evidence of the date it was originally filed with the AAO. On August 26, 2008, AAO received a respond from counsel with the box checked for "I did not file a brief or evidence in support of this appeal as I indicated on Form I-290B." In addition counsel submitted the following information regarding the applicant's charges and dispositions. For the charges (2462541) DR W/LIC SUSP-RV, (2452531) RECKLESS DRV, (96537JA) DUI ALCH, (4030870) DWLS OR REV and (284651X) RECKLESS DRV, dispositions were GUILTY. For the charges (2410-CYY) REGISTRATION, (2411-CYY) DWLS "KNOWING," (2630-KEC) DWLS "KNOWING," (4030860) INSURANCE (PIP), (4030850) REGISTRATION, and, (4030840) FAIL TO DRIVE W/I SINGLE LANE; dispositions were DISMISSED SAO. For the charge (246801) DUI ALCH, the disposition was NOLLE-PROSS, and charge (7859-SBU) CARELESS DRV, disposition was WITHHOLD ADJT.

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.

The record of proceeding reflects the following arrests:

1. On July 5, 1993, the applicant was arrested by the Miami Dade Police Department, Agency Case No. [REDACTED], and charged with (1) Traffic Offense – DUI.
2. On December 31, 1993, the applicant was arrested by the Miami Dade Police Department, Agency Case No. [REDACTED], and charged with (1) Traffic Offense – DUI.
3. On April 30, 1994, the applicant was arrested by the Metro-Dade Police Department, Agency Case No. [REDACTED], and charged with (1) Resisting Officer – FAIL OBEY ORDER.
4. On September 1, 1996, the applicant was arrested by the Metro-Dade Police Department, Agency Case No. [REDACTED] and charged with (1) Traffic Offense – DUI.
5. On June 16, 2003, the applicant was arrested by the Metro-Date Police Department, Agency Case No. [REDACTED], and charged with (1) Moving Traffic Viol – BW RECKLESS DRIVING.
6. On July 26, 2003, the applicant was arrested by the Miami Police Department, Agency Case No. [REDACTED] and charged with (1) Moving Traffic Viol – BW RECKLESS DRIVING.
7. On November 9, 2003, the applicant was arrested by the Metro-Dade Police Department, Agency Case No. [REDACTED] and charged with (1) OBSTRUCT.
8. On October 5, 2004, the applicant was arrested by the Metro-Dade Police Department, Agency Case No. [REDACTED], and charged with (1) Larceny – GRAND THEFT 3RD DEGREE, and (2) CONTRACTING ENGAGE IN WITHOUT A LICENSE.

The final court dispositions contained in the record reveal that the applicant was convicted on October 3, 1996, of DISOBEY FIRE/POLICE OFFICER. The record also shows the charges of GRAND THEFT 3RD DEGREE and CONTRACTING ENGAGE IN WITHOUT A LICENSE were dismissed on October 25, 2004; and the charge of DWLS "KNOWING OF VIOLATION" was dismissed on January 11, 2004.

However, the final court disposition for the arrests #1, #2, #4, #5, #6, and #7 are not contained in the record. The applicant, in this case, has failed to provide any evidence revealing the final court disposition for all of his arrests detailed 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 application will be 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.