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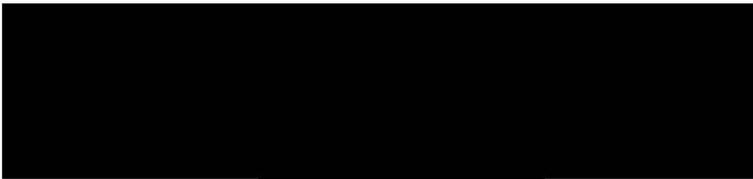
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



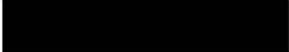
U.S. Citizenship
and Immigration
Services

M.L.



APR 01 2009

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 208 70095]

IN RE:

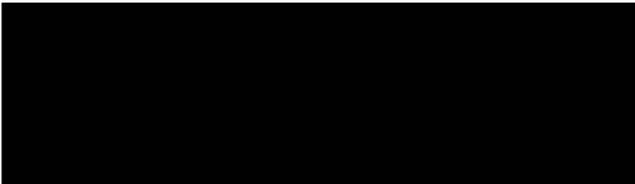
Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on September 9, 2002, under receipt number SRC 02 279 53619. The Director, Texas Service Center, approved that application on March 18, 2004.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

CIS electronic records indicate that the applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, and indicated that he was re-registering for TPS. However, the record of proceedings does not contain a copy of this application.

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. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

The record reveals the following offenses:

- (1) On March 14, 1996, the applicant was arrested by the Broward County, Florida Sheriff's Office for "Possess Stolen Property."
- (2) On December 29, 1997, the applicant was arrested by the Pompano Beach Police Department for "Marijuana – Possess – Poss Cannabis 20 Grams or Less," "Driving With License Suspended," and "Unlawful License Tag Sticker Attach." [REDACTED]
- (3) On March 5, 1998, the applicant was arrested by the Margate, Florida Police Department for "Possess Stolen Property – Tag and Decal."
- (4) On July 12, 1998, the applicant was arrested by the Florida Highway Patrol for "Resisting Officer – Without Violence" and "Driving With License Suspended."

- (5) On September 10, 1999, the applicant was arrested by the Orlando, Florida Police Department for “Failure to Appear – DWLS With Knowledge,” “NVDL,” and “Obstructing Justice.”

Pursuant to a letter dated September 9, 2005, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted documentation that indicated that the applicant was convicted on February 5, 1998, of “Possession of Cannabis,” “Driving While License Suspended,” and “Unlawful License Tag.” On February 12, 1998, the applicant was convicted of “Driving Under the Influence.” (Arrest date: February 8, 1998; [REDACTED]). On March 2, 2004, the applicant was convicted of “Driving While License Suspended”, all misdemeanors.

The director withdrew temporary protected status and denied re-registration because the applicant had been convicted of more than two misdemeanors in the United States.

On appeal, counsel for the applicant claims that the director erred in denying the application. According to counsel, the applicant has not been convicted of all of the crimes, or the cases are non-criminal traffic infractions. However, neither counsel nor the applicant provides evidence to support this claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14. The convictions reflected on documents submitted by the applicant indicate he has been convicted of two misdemeanors in the United States. Consequently, the director’s decision to withdraw the applicant’s TPS is affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.