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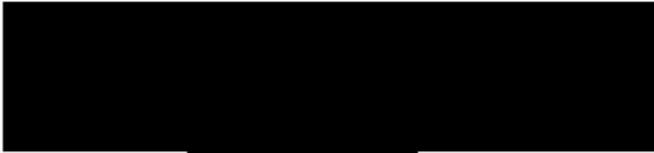
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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M,



FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 05 2009

[EAC 07 162 50246, *appeal*]
[SRC 99 115 50913]

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: SELF-REPRESENTED

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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 April 10, 2002. The director subsequently withdrew the applicant's status and denied the re-registration application on April 13, 2007, when it was determined that the applicant had failed to provide court disposition for his arrest on March 15, 2006 on a drug charge.

On appeal, the applicant states:

1. My name is [REDACTED] a 19 year old citizen and national of Honduras, who came to the United States without inspection and subsequently applied for Temporary Protected Status.
2. At this time, I believe that I am eligible for TPS benefits because I have only been convicted of one misdemeanor, failure to identify, a class "B" misdemeanor, which is a petty offense under the immigration laws, see Tab B. Further, this case was dismissed on May 2, 2005, see Tab C. Since that crime I have only been arrested one other time, and that case is now pending in the courts in Montgomery County, Texas. As far as I know, I have not been convicted on this case at this time, and I believe that I cannot be denied my TPS simply because this case is pending at this time. Also, since there is no final conviction as yet in this case, I cannot understand why it is being used to punish me in my TPS Application.
3. I have not been arrested on any other cases since this one, and I believe that I am eligible to renew my TPS status.
4. Please consider the problems my family will have if I am denied this TPS status, because I know that this is the only immigration benefit that is available to me at this time, and because of that my family and I sincerely ask that the District Director's office look at all the circumstances surrounding this appeal and allow me the opportunity to continue my TPS application.

The applicant forwards court documents showing that on March 17, 2006, the applicant entered a plea of guilty/nolo contendere and was convicted by a Judge in the County Court of Law Number 1 of Montgomery County, Texas, of "Fail to Identify Giving False/Fictitious Information" to an office of the Conroe Police Department in Conroe, Texas, a misdemeanor. He also submits a Motion To Dismiss submitted to the Court on May 2, 2005, for the offense of "Failure to Identify "B"" indicating that he had provided the court with proof of completed community service. The Judge granted the motion and dismissed the charge on May 2, 2005. (Cause No. [REDACTED])

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) The applicant was convicted by a Judge in the County Court of Law Number 1 of Montgomery County, Texas, of “Fail to Identify Giving False/Fictitious Information” on or about September 30, 2004, to an officer of the Conroe Police Department in Conroe, Texas, a misdemeanor. (Cause No. [REDACTED])
- (2) On April 27, 2007, the applicant was convicted by a Judge in the District Court of Montgomery County Texas, 359th Judicial District, of the possession of a controlled substance, a misdemeanor. (Cause No. [REDACTED]).
- (3) On March 17, 2006, the applicant was convicted by a Judge in the County Court of Law Number 1 of Montgomery County, Texas, of Failure to Identify “B,” a misdemeanor. (Cause No. [REDACTED])

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.

Even though applicant's conviction detailed in Item # 1 above for Fail to Identify Giving False/Fictitious Information was later dismissed by the court on May 2, 2005, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction, even by operation of a state rehabilitative statute. Therefore, even though the conviction was expunged by the Judge vacating the previous judgment, for immigration purposes, the applicant remains convicted of the charge. Certified court records contained in the record of proceedings confirm the convictions detailed in Items #1, # 2 and # 3 above.

The applicant is ineligible for TPS due to his record of three misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction in Item # 2 above. Consequently, the director's decision to withdraw TPS and deny all re-registration applications is affirmed.

It is noted that the applicant was deported from the United States to Honduras at Houston, Texas, on July 12, 2007.

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.