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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

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 30 2009

[WAC 01 174 50776]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 April 9, 2001, under receipt number WAC 01 174 50776. The Director, California Service Center, approved that application on April 2, 2002.

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 director withdrew temporary protected status because the applicant had failed to submit evidence necessary for the proper adjudication of the 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.

The record reveals the following offenses:

- (1) On March 21, 2002, the applicant was arrested by the San Rafael, California Sheriff's Office for "Bat: Souse/Ex Sp/Date/Etc. The applicant pled guilty and was convicted of "Assault," a misdemeanor.
- (2) On March 25, 2003, the applicant was arrested by the San Rafael, California Sheriff's Office for three counts of "Force/ADW – Not Firearm."
- (3) On September 21, 2004, the applicant was arrested by the San Rafael, California Sheriff's Office for "Force/ADW – Not Firearm."
- (4) On November 3, 2006, the applicant was arrested by the San Rafael, California Sheriff's Office for "DUI Alcohol /Drugs," "DUI Alcohol/0.08 w/Priors," and "Drive, License Suspended/Revoked."

Pursuant to a letter dated April 29, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to respond to the notice.

The director withdrew temporary protected status because the applicant failed to submit the requested evidence.

On appeal, counsel for the applicant claims that the statute does not permit the withdrawal of TPS on the basis of criminal acts arising subsequent to an initial grant. Counsel also contends that the director lacks authority to withdraw TPS for failure to comply with requests for immaterial evidence. In addition, counsel claims that the director is statutorily required to issue employment authorization to TPS holders and may not condition the exercise of this duty on acts by the alien.

According to counsel, the language in the Act "does not permit withdrawal on the basis of subsequently arising circumstances that would have justified denial at the inception of the Temporary Protected Status." Counsel's contention, however, is without foundation and contrary to the language in the statute. According to 8.C.F.R. § 244.14(a), 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*. (Emphasis added.)

Thus, contrary to counsel's contention, the director is authorized to withdraw the applicant's Temporary Protected Status because of subsequent criminal actions.

Counsel also argues that because subsequent convictions would not be the basis for withdrawal of TPS, evidence relating to any conviction is immaterial and irrelevant to the adjudication. As discussed above, counsel is clearly wrong in his thinking concerning the applicability of subsequent criminal history in withdrawing an applicant's TPS. Consequently, such evidence pertaining to the applicant's criminal record is therefore material and may be sought by the director. Therefore, failure to provide such evidence is grounds for denying the TPS application.

Counsel's line of argument that the director is statutorily required to issue employment authorization to TPS holders is specious and without foundation. **An applicant is granted employment authorization contingent on the approval of his TPS application.** Once TPS was withdrawn, the applicant was no longer eligible for this benefit.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the director's decision to withdraw TPS and to deny re-registration is affirmed.

Furthermore, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

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.