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



U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

FEB 04 2010

Date:

[WAC 03 086 51704]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 claims to be 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 January 22, 2003. The Director, California Service Center, approved that application on June 19, 2003.

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 requested court documentation relating to his criminal record.

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 September 25, 2001, the applicant was arrested by the Nevada Highway Patrol for "Driving Under the Influence" and "Reckless Driving."
- (2) On November 6, 2006, the applicant was arrested by the Las Vegas, Nevada Metro Police Department for "Burglary W/Felony" and "Battery Domestic Violence." [REDACTED]

Pursuant to a letter dated March 26, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documentation for the November 6, 2006 arrest. According to the submitted court disposition, on March 23, 2007, the applicant pled guilty to, and was convicted of, "Battery Constituting Domestic Violence," a misdemeanor. However, the applicant failed to provide the requested court documentation for the September 25, 2001 arrest.

The director withdrew temporary protected status because the applicant had failed to submit the requested court documentation for the September 25, 2001 arrest.

On appeal, counsel for the requests an additional 30-45 days in which to submit the requested court documentation. The applicant submitted on appeal an Incident Report from the Las Vegas Metropolitan Police Department and an undated form letter from Nevada Highway Patrol. The Incident Report corroborates the November 6, 2006 arrest, but does not provide the final disposition. The letter from the Highway Patrol indicates that the Highway Patrol is required to retain all arrest reports for five years, accident reports and citations for two years and after those periods the reports are disposed of. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

The applicant is ineligible for TPS because of his failure to submit evidence necessary for the proper adjudication of the application.

Furthermore, it is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. In addition, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. 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.