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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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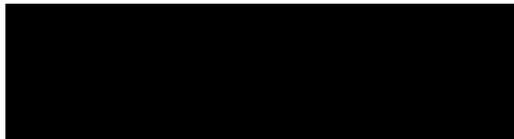


OFFICE: VERMONT SERVICE CENTER

DATE:
FEB 03 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, Vermont Service Center.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

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that his arrest of April 19, 2003 was rejected and no charges were filed, he was referred to a deferred entry of judgment program for his arrest of April 7, 2008, and he attended a court ordered Abuse Awareness Class for his arrest of September 30, 2008.

The director may withdraw the status of an alien granted TPS 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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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 8 C.F.R. § 244.4(a).

"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.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Federal Bureau of Investigation report dated August 31, 2010, reflects the following offenses in the state of California:

- 1) On April 19, 2003, the applicant was arrested by the Sheriff's Office in San Diego for one count of battery on a spouse/ex-spouse/etc.
- 2) On April 7, 2008, the applicant was arrested by the Sheriff's Office in San Diego for one count of being under influence of a controlled substance.
- 3) On September 30, 2008, the applicant was arrested by the Sheriff's Office in San Diego for one count of inflicting corporal injury upon a spouse/cohabitant; one count of exhibiting a deadly weapon, and one count of preventing/dissuading victim/witness.

- 4) On December 19, 2008, the applicant was arrested by the Sheriff's Office in San Diego for one count of being under influence of a controlled substance, and one count of driving under the influence of alcohol/drugs.

In response to the Notices of Intent to Withdraw TPS issued on [REDACTED] which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- A referral form from the Domestic Abuse Awareness Classes for Men issued March 3, 2009.
- An Agreement for Deferred Entry of Judgment dated May 19, 2008, for the offense of California Penal Code section 647(f)(d)
- [REDACTED] in regards to the applicant's arrest in number two above. The court documentation indicates that an amendment to complaint was filed and a charge of California Penal Code section 647(f)(d) was added. On May 19, 2008, the applicant pled no contest to violating California Penal Code section 647(f)(d). The remaining charge, under the influence of a controlled substance, was dismissed.
- A Participant Status Report from the County of San Diego dated February 17, 2009.
- A letter dated June 12, 2009, from the Office of the District Attorney in San Diego County, indicating that no felony or misdemeanor charges were filed against the applicant for actions resulted in his arrest on September 30, 2008, for domestic violent charges.

In response to the notice issued on March 9, 2009, the applicant asserted, in pertinent part:

I do not have any of the depositions [sic] from my cases in California, at this time I am taking domestic violence prevention classes ordered by the judge and have recently completed an AIDS prevention program also ordered by the Judge for which I am scheduled to appear in court on November 11th 2009. I am requesting more time so that I may complete these courses and get the depositions [sic] you requested.

In response to the notice issued on May 19, 2009, the applicant provided a letter addressed to U.S. Citizenship and Immigration Services from an attorney, [REDACTED], who asserted, in pertinent part:

I have not as yet received a letter from the City Attorney Office for San Diego regarding the April 19, 2003 incident. They have however informed me that the case was rejected and no charges were filed. After repeated requests for a "No File Letter", I am still waiting.

The applicant did not provide the requested certified court documents for his arrest on December 19, 2008, for violating section 11550(a) H&S, use/under the influence of a controlled substance, and section 23152(a) VC, driving under the influence of alcohol. On June 12, 2009,¹ the Director, Vermont Service Center, withdrew [REDACTED] because the applicant did not submit the requested court dispositions pertaining to all his arrests.

On appeal, the applicant provides copies of documents that were previously submitted along with a Status Report dated May 11, 2010, from the Domestic Abuse Awareness Classes for Men in [REDACTED] New York, indicating the applicant had completed the course on April 27, 2010.

On November 26, 2010, the AAO issued a notice to the applicant advising him that because he did not submit complete court documents, it could not be determined that the Agreement for Deferred Entry of Judgment related to his arrest on April 7, 2008. However, upon further review, it has been determined that said document relates to the applicant's arrest on April 7, 2008. The court documentation in Case no. M047870 along with its supporting documentation establishes that it relates to the arrest on April 7, 2008, and that the applicant has been convicted of California Penal Code 647(f)d PC, a misdemeanor.

The AAO's notice also advised the applicant that he had not provided any credible evidence to support his assertion that no charges were filed against him for the arrest on April 19, 2003. The applicant was advised that he had the burden to establish with *affirmative evidence* that no charge was filed or that the charge was dismissed or in error. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant was given 30 days in which to provide certified court documentation from the court, the district attorney's office or the California Department of Justice indicating the final outcome of his arrest on April 19, 2003, for violating section 243(e)(1) PC, battery on a spouse/ex-spouse/etc. In a letter dated December 23, 2010, the applicant requested an extension of time to obtain the requested court documentation. However, more than 30 days later, no additional correspondence has been presented by the applicant.

The applicant is ineligible for TPS because of his failure to provide the requested information (numbers one and four above) necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

An alien applying for TPS 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 from the withdrawal of the TPS application is dismissed.

¹ The notice was re-mailed to the applicant on May 25, 2010.