



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAR 31 2015**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On July 24, 2013, after the applicant applied for re-registration, the director withdrew the initial grant of TPS, as a result of the applicant having been arrested for possession of cocaine with intent to sell and, consequently, being found to be in violation of section 212(a)(2)(C) of the Act as a drug trafficker. On May 5, 2014, the applicant again applied for re-registration of his TPS status. On August 29, 2014, the director denied the application, stating that the applicant was not eligible to seek re-registration as his previous grant of TPS had been withdrawn.

On appeal, counsel asserts that the applicant's TPS was erroneously revoked as he has never been convicted of a crime that would disqualify him from TPS and he possesses the good moral character required for TPS.

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. 8 C.F.R. § 244.14(a)(1).

Section 212(a)(2)(C) of the Act states:

(C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so ... is inadmissible.

Inadmissibility under section 212(a)(2)(C) of the Act applies when the adjudicator "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977); see also *Garces v. U.S. Attorney General*, 611 F.3d 1337, 1345-46 (11<sup>th</sup> Cir. 2010); *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000). In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Matter of Rico*, 16 I&N Dec. at 185. A conviction or a guilty plea is not necessary to find a "reason to believe." *Castano v. INS*, 956

F.2d 236 (11th Cir. 1992); *Nunez-Payan v. INS*, 815 F.2d 384 (5th Cir. 1987); *Matter of Favela*, 16 I&N Dec. 753 (BIA 1979).

The record establishes that on [REDACTED] 2011, the applicant was arrested and charged with selling cocaine and possession of cocaine. The arrest report in the applicant's case states that the applicant was in possession of two plastic bags of cocaine, the equivalent of 1 gram of cocaine, which he sold to an undercover police officer. The certified court disposition for these charges states that on [REDACTED] 2011, no action was taken on the possession of cocaine charge and on [REDACTED] 2014, the charge regarding selling cocaine was dismissed. The director used the information presented in the arrest report as reasonable, substantial, and probative evidence in establishing a reason to believe the applicant is an illicit trafficker in a controlled substance.

Whether a police report constitutes "reasonable, substantial, and probative" evidence in the context of an inadmissibility finding under section 212(a)(2)(C) is a determination that is made on a case-by-case basis. In *Garce v. U.S. Attorney General*, the 11<sup>th</sup> Circuit declined to find an applicant inadmissible under section 212(a)(2)(C) of the Act based on information in police reports. *Garces, supra*, at 1349. In *Garces*, there was very little information given in the police reports and the corroborating conviction had been vacated. *Id.* at 1344, 1349. The 11<sup>th</sup> Circuit noted that the police reports stated the police officers' conclusions rather than recording their observations of facts sufficient to show guilt. *Id.* at 1349. The Court noted that in their previous decisions and in decisions by the BIA, "reason to believe" has been upheld in cases where the alien either admitted that he or she had trafficked in drugs, or he or she was caught with a significant quantity of them. *Id.* at 1350. However, the court also stated that these examples were not given to suggest that they set a bar to be cleared in "reason to believe" cases, but simply to illuminate the weakness of the evidence against *Garces*. The Court then declined to define the minimum showing necessary to establish "reason to believe." *Id.*

Taking into consideration the *Garces* decision, we find that the applicant is inadmissible under section 212(a)(2)(C) of the Act. The applicant's case and the evidence present herein can be distinguished from the evidence presented in *Garces*. In the applicant's case there is a detailed police report recording police officer's observations of facts sufficient to show guilt and not merely conclusions by an officer. The applicant's arrest report details the findings, observations, and experience of two undercover police officers as one of them interacted with the applicant and one of them observed the interaction. Thus, we find that the police report constitutes reasonable, substantial, and probative evidence that the applicant has been an illicit trafficker in a controlled substance. Beyond counsel's assertion that the applicant possesses the good moral character for a grant of TPS, the applicant does not provide any contrary evidence to rebut the record and it is the applicant's burden of proof in these proceedings to establish that he is admissible. The applicant has provided no credible evidence to overcome the evidence supporting the finding that he is inadmissible under section 212(a)(2)(C)(i) of the Act.

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*NON-PRECEDENT DECISION*

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The applicant is ineligible for TPS due to his inadmissibility under section 212(a)(2)(C) of the Act. There is no waiver available for this inadmissibility. Consequently, the director's decision to withdraw TPS and deny the applicant's re-registration will be affirmed.

An applicant 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 is dismissed.