



U.S. Citizenship
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FILE: [REDACTED] Office: California Service Center Date: **MAR 05 2007**
[WAC 01 180 55630]
[WAC 05 210 88107]

IN RE: Applicant: [REDACTED]

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 office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 an initial TPS application on April 10, 2001, under CIS receipt number WAC 01 180 55630. The director initially approved that application on March 22, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 27, 2005, under CIS receipt number WAC 05 210 88107, and indicated that he was re-registering for TPS.

The director withdrew the applicant's TPS on June 13, 2006, and simultaneously denied the re-registration application. The director noted that the applicant failed to submit evidence requested in a September 1, 2005, notice of intent to deny to submit the final court disposition of an arrest by the Sheriff's Office, Hurricane City, Utah, in 2004, for lewdness and for disorderly conduct. The director, therefore, deemed the re-registration application abandoned. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The director, simultaneously, withdrew the applicant's temporary protected status as the applicant failed to comply with re-registration requirements for TPS. Since there was no appeal available for the re-registration application, the AAO will only consider the appeal of the director's decision to withdraw TPS.

On appeal, the applicant states that he has provided the requested documents as he is now submitting the final court dispositions that he recently received from the court. With his appeal, the applicant submits court dispositions from the Hurricane City Court, Hurricane City, Utah, for an arrest on July 13, 2004. The applicant does not submit any additional evidence on appeal.

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 for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

As noted above, on September 1, 2005, the director notified the applicant of the intent to withdraw his temporary protected status because the record reflected that the applicant had been convicted of two or more misdemeanors. The applicant was granted 30 days to submit final court dispositions. As the applicant failed to submit the requested court dispositions, the director deemed the re-registration application abandoned and withdrew the applicant's temporary protected status.

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

It is noted that the record reveals that, regarding the arrest on July 13, 2004, the Hurricane City Court disposition records indicate that the applicant's bail was forfeited, as payment towards fines, for three offences,

namely Lewdness, Disorderly Conduct, and Public Intoxication. The record of proceedings also reveals that the applicant was convicted, on a guilty plea, on August 14, 2002, by the Superior Court of California offenses of: 23152 (B) VC MISD – .08% MORE WGHT ALCHOL DRIVE VEHICLE, and sentenced to 36 months probation, plus fines.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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.

As noted above, the record reveals misdemeanor convictions for the applicant. Therefore, the applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.