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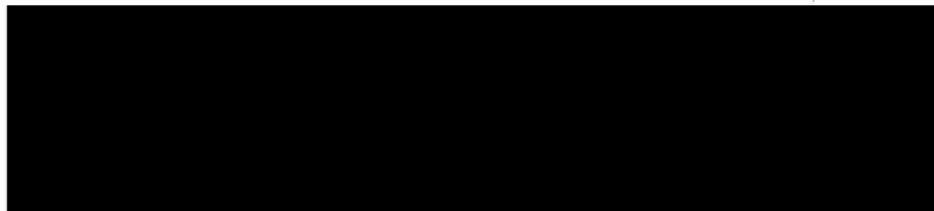
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FILE: [WAC 05 140 72783]

OFFICE: CALIFORNIA SERVICE CENTER

DEC 27 2006
DATE:

IN RE: Applicant:

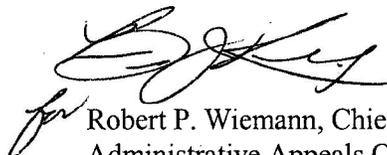


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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 application was denied 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 native and 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 July 23, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 02 230 55029. The director denied that application on July 28, 2003, because the applicant was convicted on August 2, 1996, in the Superior Court of California, County of Los Angeles, of transport/sell narcotic controlled substance, 11352(a) Health and Safety Code (H&S), a felony. On August 26, 2003, the applicant filed an appeal from the denial decision. The AAO summarily dismissed the appeal on June 7, 2004, because the applicant had failed to identify specifically any erroneous conclusion of law or statement of fact in the proceedings.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 17, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on October 3, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that she has not been convicted of any felony because her case was dismissed. She submits additional evidence.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on February 17, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he or she has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe she is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The applicant submits, on appeal, an uncertified copy of a Minute Order by the Superior Court of California, County of Los Angeles, dated December 15, 2004, ordering that the plea, verdict, or finding of guilt be set aside and vacated and a plea of not guilty be entered, and the information be dismissed, pursuant to § 1203.4 PC. It is noted that the uncertified Minute Order indicates that the applicant was convicted of the felony offense of "possession of a controlled substance, 11350(a) H&S." The conviction records of the Superior Court, however, indicate that the applicant was convicted of 11352(a) H&S. This section states, in part: "Every person who transports, imports into this state, sells, furnishes, administers, or gives away any controlled substance shall be punished by imprisonment in the state prison for three, four, or five years."

Regardless, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or

conviction by operation of a state rehabilitative statute. The applicant, therefore, remains convicted, for immigration purposes, of the felony offense of 11352(a) H&S. Also, the applicant's drug-related conviction renders the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act.

Accordingly, the applicant is ineligible for TPS based on her felony conviction and because she is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Therefore, the application also must be denied for this reason.

The Federal Bureau of Investigation fingerprint results report indicates that on May 2, 1998, in San Ysidro, California, the applicant (name used: [REDACTED] file number [REDACTED] was arrested and charged with "attempted illegal entry into the US," and that she was expeditiously removed from the United States.

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.