

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

M1

FILE:

[WAC 05 221 78542]

Office: California Service Center

Date: **DEC 29 2006**

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.


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 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 May 9, 2001, under CIS receipt number SRC 01 201 55591. The director denied that application on November 22, 2003, because the applicant failed to appear for fingerprinting as notified by the director on May 9, 2001. The director, therefore, considered that application abandoned and denied the application. 8 C.F.R. § 103.2(b)(13). 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 record does not reflect that the applicant filed a motion to reopen or reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 9, 2005, under CIS receipt number WAC 05 221 78542, and indicated that he was re-registering for TPS. The director denied the re-registration application, on August 25, 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 states that he does not understand why his TPS application was denied in 2003. With the appeal, in an attempt to establish the applicant's eligibility for TPS, the applicant submits a CIS Fingerprint Notification dated June 7, 2005; a copy of a Texas driver's license, that expired on April 29, 2002; and 2 Employment Authorization Cards, one expired on September 9, 2003, and the other on September 9, 2002.

However, 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, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, an alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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.

The record reveals the following convictions:

- (1) On April 8, 2005, the applicant was convicted in the County Criminal Court at Law # 10 in the County of Harris, Texas, for the offense of Driving While Intoxicated, for which he received a sentence, on a guilty plea, of 10 days confinement;
- (2) On August 18, 2005, the applicant was convicted in the County Criminal Court at Law # 6 in the County of Harris, Texas, for the offense of Deadly Conduct, for which he received a sentence, on a guilty plea, of 50 days confinement;
- (3) On November 7, 2005, the applicant was convicted in the County Criminal Court at Law # 12 in the County of Harris, Texas, for the offense of Driving While License Suspended, for which he received a sentence, on a guilty plea, of 5 days confinement.

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). Consequently, for this additional reason, the director's decision to deny the application will be affirmed.

It is also noted that the record reveals that the applicant was placed in Removal Proceedings, and ordered removed, on September 13, 2006, by the Immigration Judge. He was removed on October 20, 2006, at Houston, Texas.

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.