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**NOV 27 2006**

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 212 73427]

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:



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 claims to be 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 Form I-821, Application for Temporary Protected Status on May 22, 2001 under Citizenship and Immigration Services (CIS) receipt number SRC 01 216 55697. The application was denied by the Director, Texas Service Center, on September 3, 2004 because the applicant has not established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 30, 2005 and indicated that he was re-registering for TPS.

The Director denied the re-registration application on January 24, 2006 because the applicant's initial TPS application had been denied and the applicant was therefore not eligible to apply for re-registration under TPS.

The applicant filed an appeal on March 3, 2006 and sustained by the director on March 10, 2006 because the initial TPS application was denied in error. However, upon further review of the record, it was discovered that the applicant was arrested on two separate occasions. CIS mailed a Notice of Intent to Deny on April 11, 2006 to the applicant requesting final court dispositions for the two arrests.

On May 9, 2006 the applicant responded and submitted court dispositions indicating the following:

- (1) Pled guilty to Driving While Intoxicated, a misdemeanor, on March 2, 2004 and sentenced to ten days in jail.
- (2) Pled guilty to Prostitution, a misdemeanor, on April 24, 2006 and sentenced to six days in jail.

The director found that the applicant was not eligible for temporary protected status under section 244(c)(2)(B)(i) due to his conviction of any felony or two misdemeanors committed in the United States and denied his application.

On appeal, the applicant claims that although he has been convicted of two misdemeanors, he is still a person of good moral character. He also submits affidavits from his landlord, former employer and an acquaintance affirming that they have known the applicant since 2001.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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:
    - (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.

An alien shall not be eligible for temporary protected status under this section 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.

On appeal, the applicant claims that although he has been convicted of two misdemeanors, he is still a person of good moral character. He also submits affidavits from his landlord, former employer and an acquaintance affirming that they have known the applicant since 2001.

However, the applicant did not submit any evidence suggesting that he has not been convicted of any felony or two misdemeanors committed in the United States.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.