



U.S. Citizenship
and Immigration
Services

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MAI

FILE:



Office: California Service Center

Date: APR 04 2007

[WAC 05 131 79139]

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 stated 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 a late initial TPS application on February 8, 2005, under CIS receipt number WAC 05 131 79139. The director denied the application, on April 17, 2006, because the applicant had been convicted of 2 misdemeanors. The director, therefore, determined that the applicant was not eligible for TPS.

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.

The record reveals the following convictions:

- 1) On July 17, 2003, the Superior Court of California, County of Riverside, convicted the applicant, on a guilty plea, of Fighting in a Public Place. The applicant was sentenced to 8 days confinement and fined \$400.14.
- 2) On June 26, 2002, the Superior Court of California, County of Riverside, convicted the applicant, on a guilty plea, of Violation of Court Order, a misdemeanor. The applicant was sentenced to 36 months probation, and plus \$230.00 fines and fees.
- 3) On June 15, 1999, the Superior Court of California, County of Riverside, convicted the applicant, on a guilty plea, of Unlicensed Operator, a misdemeanor. The applicant was fined \$281.

On appeal, in an attempt to establish the applicant's eligibility for TPS, the applicant states that he has been in California since 1986; the charges against him were taken care of; and he no longer drives. With his appeal, the applicant submits a photocopy of his Social Security card, an unclear Employment Authorization document, and a California Identification card that expires on November 1, 2009.

It is noted that the applicant filed his initial TPS application on February 8, 2005, after the initial registration for El Salvador from March 9, 2001 through September 9, 2002 had expired. The applicant has not submitted sufficient evidence to establish his eligibility for late initial registration for TPS. Therefore, the application must also be denied for this reason.

The applicant is ineligible for TPS due to his record of 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.

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.