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FILE: [REDACTED]
[WAC 05 218 71913]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 27 2007

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 California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Director
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 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 March 20, 2002, under CIS receipt number SRC 02 129 54477. The Director, Texas Service Center, denied that application for abandonment on September 27, 2004, because the applicant failed to report for fingerprinting as requested. The director noted that the fingerprinting notice was mailed to the applicant's last known address. 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 which was denied.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 6, 2005, under CIS receipt number WAC 05 218 71913, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant does not state the reasons for his appeal. It is noted that the applicant indicates on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed September 15, 2005, that an appeal brief will be submitted within 30 days. However, the record does not reflect receipt of an appeal brief. With the appeal, the applicant submits additional documents, including tax returns and earnings statements. Therefore, the record must be considered complete.

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.

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).

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.

The record reveals that the applicant has four felony convictions:

1. On August 18, 1994, the Superior Court of California, County of San Mateo, California, convicted the applicant of "POSSESSION OF CONTROLLED SUBSTANCE, to wit, COCAINE," a felony, in

violation of Section 11350(a) of the California Health and Safety Code. The applicant was sentenced to three years probation, and 45 days jail;

2. On April 23, 1996, the Superior Court of California, County of San Mateo, California, convicted the applicant of "SECOND DEGREE BURGLARY," a felony, in violation of Section 460(b) of the California Penal Code. The applicant was sentenced to two years prison;
3. On July 12, 1999, the Superior Court of California, County of San Mateo, California, convicted the applicant of "POSSESSION OF CONTROLLED SUBSTANCE FOR SALE, to wit, COCAINE BASE," a felony, in violation of Section 11351.5 of the California Health and Safety Code. The applicant was sentenced to six years prison;
4. On March 2, 2002, the Superior Court of California, County of San Mateo, California, convicted the applicant of "ROBBERY IN INHABITED HOUSE," a felony, in violation of Section 212.5(a) of the California Penal Code. The applicant was sentenced to three years prison.

The record reveals four felony convictions for the applicant. Therefore, the applicant is ineligible for TPS due to his record of four felony convictions, detailed above, and he is not eligible to re-register for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). For this additional reason, the application for TPS must be denied.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. It is also noted that the applicant is inadmissible as his convictions for burglary, and robbery, are crimes involving moral turpitude. Therefore, for this additional reason, the applicant is ineligible for Temporary Protected Status.

It is also noted that the record reveals that the applicant was placed in proceedings (under A70 974 576) and was removed from the United States on June 27, 1997, pursuant to a removal order. On June 12, 2002, an order reinstating the prior removal order was issued after the applicant reentered 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.

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.