



U.S. Citizenship  
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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 09 2007

[WAC 05 228 78891]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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*  
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 a TPS application subsequent to the initial registration period under CIS receipt number SRC 03 257 53811. The Director, Texas Service Center, denied that application on December 31, 2003, based on the applicant's failure to demonstrate that he was eligible to file under the late initial registration provisions. The applicant did not appeal that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that he was re-registering for TPS.

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

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.

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).

On appeal, the applicant states that he is eligible for late registration because he filed his TPS application under his mother's TPS petition, and that his father included him in his NACARA Suspension of Deportation or Application for Special Rule Cancellation of Removal application, INS Form I-881. The applicant submitted as evidence a photocopy of his father's Form I-551 Permanent Resident Card dated August 16, 2000, and a copy of page four of his father's asylum application.

Although the applicant claims that he is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2) due to his father's NACARA petition; the record of proceeding indicates that the applicant's father's NACARA case was administratively closed on August 16, 2000, which is prior to the relevant TPS registration period for El Salvadorans. More importantly, the record of proceeding shows that the applicant has been convicted of at least one felony and at least two or more misdemeanors, which renders him ineligible for TPS.

As promulgated by statute, 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 offenses:

1. On November 4, 2004, the applicant was convicted of speeding to elude arrest—Class 1 misdemeanor— in the Wade County Court, Raleigh, North Carolina.
2. On November 4, 2004, the applicant was convicted of larceny—Class 1 misdemeanor— in the Wade County Court, Raleigh, North Carolina.
3. On February 4, 2005, the applicant was convicted of obstruction of justice—Class 2 misdemeanor— in the Wade County Court, Raleigh, North Carolina.
4. On March 21, 2006, the applicant was convicted of one count of attempt breaking and entering—Felony— in the Wade County Court, Raleigh, North Carolina. Court Docket # [REDACTED]
5. On March 21, 2006, the applicant was convicted of one count of breaking and entering—Felony— in the Wade County Court, Raleigh, North Carolina. Court Docket # [REDACTED]
6. On March 21, 2006, the applicant was convicted of one count of breaking and entering—Felony— in the Wade County Court, Raleigh, North Carolina. Court Docket # [REDACTED]
7. On March 21, 2006, the applicant was convicted of one count of larceny value greater than \$1,000—Felony— in the Wade County Court, Raleigh, North Carolina. Court Docket # [REDACTED]

8. On March 21, 2006, the applicant was convicted of one count of larceny value greater than \$1,000—Felony— in the Wade County Court, Raleigh, North Carolina. Court Docket # [REDACTED]

The applicant is ineligible for TPS due to his record of one or more felonies and two or more misdemeanors as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the TPS application will be denied.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c). For this additional reason, the TPS application will be denied.

It is noted that a warrant of deportation (removal) issued against the applicant in 1992 at Harlingen, Texas, remains outstanding.

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.