



U.S. Citizenship  
and Immigration  
Services

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FILE:

[WAC 01 197 52029]  
[WAC 05 225 82894]

OFFICE: California Service Center

DATE: FEB 21 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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The applications were denied by the Director, California Service Center. They are now on appeal before the Administrative Appeals Office (AAO). 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 applicant filed an initial Form I-821, Application for Temporary Protected Status [WAC 01 197 52029], on April 26, 2001. The application was denied by the director on March 9, 2006, on the ground that the applicant was convicted of a felony charge of first degree burglary on August 27, 2003, making him ineligible for TPS under section 244(c)(2)(B) of the Act.

On appeal, the applicant contends that he should be granted a waiver of inadmissibility and approved for TPS because he has a wife and children in the United States to whom he provides financial and emotional support.

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.

The evidence of record, which includes a Felony Complaint filed against the applicant and a “Minute Order” from the Superior Court of California, County of Orange, shows that the applicant was arrested in Orange County on March 16, 2003, on the charge of first degree burglary in an inhabited dwelling, a felony in the State of California, and that he pleaded guilty to the felony charge on August 27, 2003, for which he was sentenced to 180 days in jail and three years probation. Since the applicant has been convicted of a felony committed in the United States, he is ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the AAO concurs with the director’s decision denying the initial TPS application.

The applicant filed the current Form I-821 [WAC 05 225 82984] on March 11, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on March 9, 2006, because the applicant’s initial TPS application had been denied, making the applicant ineligible to apply for re-registration under section 244 of the Act. The applicant has appealed.

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. See 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. Furthermore, the applicant's felony conviction makes him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to deny the re-registration application will also 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.