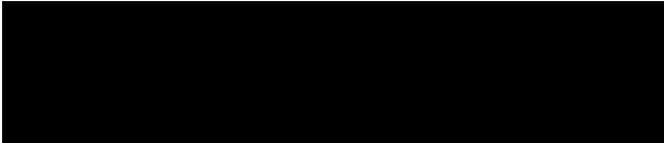


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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 17 2007

[WAC 05 223 77961]

IN RE:

Applicant:



APPLICATION:

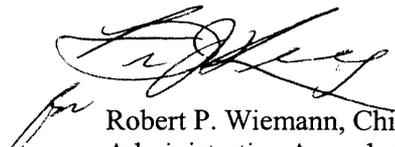
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 on appeal. The appeal will be dismissed.

The applicant is a native and 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 during the initial registration period on June 22, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 243 59715. The director denied that application on March 11, 2004, because the applicant was convicted of a felony or two or more misdemeanors; namely, (1) on July 22, 1991, in the Municipal Court of L.A.-Van Nuys Judicial District, County of Los Angeles, California, of "sell/furnish/etc marijuana/hashish," 11360(a) H&S, a felony; and (2) on January 9, 2002, in the Municipal Court of San Fernando Courthouse Judicial, County of Los Angeles, California, of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

An alien shall not be eligible for temporary protected status 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on October 11, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he is in the process of having his criminal record dismissed, and that he will submit a written brief and supporting document after the criminal record is dismissed. As of this date, however, the file contains no further response from the applicant. However, even if the applicant's convictions were, in fact, dismissed, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

The applicant is ineligible for TPS because of his felony conviction pursuant to section 244(c)(2)(B)(i) of the Act, and because he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. There is no waiver available to an alien found inadmissible under this section. 8 C.F.R. § 244.3(c)(1). Nor is there a waiver available for convictions of a felony or two or more misdemeanors committed in the United States.

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.