U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 17 2007

[WAC 05 210 83749]

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: 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 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 April 9, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 173 58395. The director denied that application on March 23, 2004, because the applicant had been convicted of two misdemeanors; namely, (1) driving under the influence of alcohol/drugs, 23152(a) VC, and (2) unlicensed driver, 12500(a) VC. The applicant appealed the director's decision to the AAO on April 22, 2004. The AAO reviewed the evidence furnished and noted that the applicant filed a petition to dismiss his convictions, under Penal Code 1203.4, because the applicant has completed all the terms of his probation; however, no effect is to be given in immigration proceedings to state rehabilitative actions that do not vacate a conviction on the merits. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). The AAO further determined that the applicant's claim that his two misdemeanor convictions arose in a single occasion cannot be accepted; the fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The AAO dismissed the appeal on November 18, 2005.

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).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on January 13, 2006, 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 states that he repents and apologizes for his actions, and requests that he be authorized to file Form I-601, Application for Waiver of Grounds of Excludability.

The applicant was convicted of two misdemeanors and his convictions continue to preclude a favorable finding of eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available for this ground of ineligibility. Therefore, the application must be denied for this reason.

The record shows that on August 31, 2001, in Los Angeles, California, the Immigration Judge administratively closed removal proceedings based on a pending TPS application.

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.