



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
[WAC 05 217 71926]

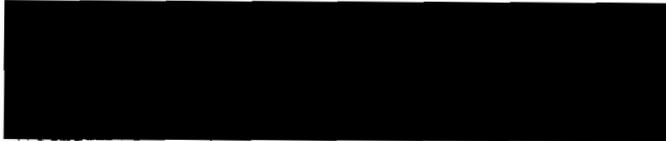
Office: California Service Center

Date: **JAN 31 2007**

IN RE: Applicant: [REDACTED]

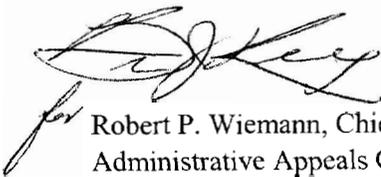
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF APPLICANT:



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 stated 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 record reveals that the applicant filed an initial TPS application on May 11, 2002, under CIS receipt number SRC 02 184 53403. The California Service Center director denied that application on February 21, 2006, because the applicant had been convicted of a felony. The director noted that the record revealed that the applicant was convicted on April 7, 1997, in the Circuit Court of The City of Petersburg, Commonwealth of Virginia, for the offence of sale or transportation of marijuana. The record does not reflect that the applicant filed an appeal or a motion to reopen/reconsider within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 5, 2005, under CIS receipt number WAC 05 217 71926, and indicated that he was re-registering for TPS. The California Service Center director denied the re-registration application, on February 21, 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, counsel states that the applicant was denied due process in his conviction. On appeal, counsel requested 90 days to submit evidence to establish the applicant's eligibility for TPS. However, the record does not reflect that counsel has submitted any additional evidence. 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. The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The record reveals that the applicant was found guilty on April 7, 1997, in the Circuit Court of The City of Petersburg, Commonwealth of Virginia, for the offence of Possession of More than Five Pounds of Marijuana with Intent to Distribute, on November 2, 1995, in violation of Virginia Code Section 18.2-248.1. The court imposed a sentence of 10 years, and suspended nine (9) years and eight (8) months, and fined the applicant \$401.50 for costs. It is noted that the director incorrectly stated in the February 21, 2006 denial of the applicant's initial TPS application [SRC 02 184 53403] that the applicant was convicted of violating Section 11360(a) of the California Health and Safety Code.

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.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS.

As noted above, the record reveals a felony conviction for the applicant. Therefore, the applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

It is also noted that the record reveals that the applicant's asylum application was denied on November 6, 1996, he was placed in Deportation Proceedings, and ordered deported, on March 5, 1997, by an Immigration Judge.

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.