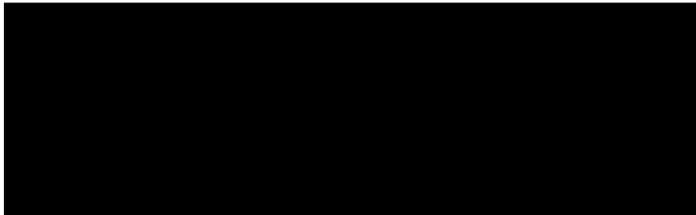


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Services

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FILE:



Office: California Service Center

Date:

JUL 05 2007

[WAC 06 122 70341]

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.

A handwritten signature in black ink, appearing to read "R. 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 (AAO) 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 late initial TPS application on June 30, 2005, under CIS receipt number WAC 06 122 70341. The director denied the application on August 2, 2006, because the applicant had been convicted of a felony or two misdemeanors, and therefore, was not eligible for TPS.

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.

On May 10, 2006, in response to an April 17, 2006 notice of intent to deny, to rebut information obtained from the Federal Bureau of Investigations (FBI) fingerprint results report, the applicant submitted final court dispositions which reveal the following:

- 1) On April 6, 2000, the applicant was arrested by the Department of Corrections, San Jose, California, and charged with Charge 1: 1 count of "DRIVING W/A 08/100 OR HIGHE". On May 12, 2000, the Superior Court of California, County of Santa Clara, California, convicted the applicant, of Count 1: violation of Section "CV 23152 (b)." The applicant was sentenced to 10 days jail, plus fines; and, Count 2: violation of Section "CV 23152 (a)." The applicant was sentenced to 12 days jail, plus fines, costs, and other restrictions;

- 2) On May 25, 2003, the applicant was arrested by the Sheriff's Office, Redwood City, California, and charged with Charge 1: 1 count of "DUI, ALCOHOL/DRUGS". On August 11, 2003, the Superior Court of California, County of Santa Clara, California, convicted the applicant, on a nolo contendere plea, of a violation of Section "CV 23152 (b)." The applicant was sentenced to 45 days jail, plus fines, costs, and other restrictions;

On appeal, the applicant reasserts his eligibility for TPS, and states that he is eligible for late initial registration because he is currently in asylum proceedings. The applicant, however, does not address the reasons for denial of his TPS application. With his appeal, the applicant submits photocopies of five Employment Authorization Cards.

The applicant correctly stated that he was eligible to file a late initial application for TPS as he had a pending asylum application at the time he filed his TPS application on June 30, 2005. The record of proceedings indicates that the applicant's asylum application was administratively closed on January 12, 2006, after the applicant filed his TPS application. However, the basis of the denial of the application was not that he had failed to file an application within the initial registration period. Rather, the director denied the application because the applicant had been convicted of a felony or two misdemeanors, and therefore, was not eligible for TPS.

The applicant remains ineligible for TPS due to his record of at least two misdemeanor convictions, 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 must be affirmed.

It is noted that in addition to the convictions described above, the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his re-registration application, reflects that:-

1. On June 9, 2000, the applicant was arrested by the Department of Corrections, San Jose, California, and charged with, Charge 1: 1 count of "DRIVING W/A 08/100 OR HIGHE";
2. On September 25, 2003, the applicant was arrested by the Sheriff's Office Redwood City, California, and charged with, Charge 1: 1 count of "DUI ALCOHOL/0.08 PERCENT". The FBI report indicates that the applicant was sentenced "45 DAYS WORKP".

The final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests and any convictions in any future proceedings.

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.