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

PUBLIC COPY

[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 30 2007

[WAC 05 118 70562]

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:

[redacted]

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 claims to be 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 2, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 01 165 53648. The Interim District Director, Atlanta, Georgia (Charleston, South Carolina) denied that application on August 8, 2006, because the applicant had been convicted of a felony drug offense on September 25, 1998, and he was also arrested on May 5, 2001, for assault. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 26, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on September 1, 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 asserts that he did not receive any letters regarding his TPS application although he filed a change of address. A review of the record, however, shows that the district director's notice of denial was mailed to the applicant's most recent address at that time ([redacted]). While the applicant asserts that he filed Form AR-11, Alien's Change of Address Card, on June 30 2005, CIS database indicates that the request was received after the director's decision was mailed on August 8, 2006.

The applicant is filing the current TPS application as a re-registration; therefore, 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. Consequently, the director's decision to deny the application will be affirmed.

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 record reveals the following:

(1) On September 25, 1998, in the District Court of Cameron County, Texas, 103rd Judicial District, Cause No. [redacted] the applicant (name used: [redacted]) was convicted of possession of a controlled substance (cocaine), a felony. He was sentenced to confinement in the state prison for 2 years, imposition of sentence suspended, and he was placed on community supervision for 5 years, and to perform 120 hours of community service

(2) The Federal Bureau of Investigation fingerprint results report indicates that on May 5, 2001, in New York, New York, the applicant (name used: was arrested for "assault." The final disposition of this arrest is not contained in the record.

The applicant was convicted of a felony offense and his conviction continues 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). Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. Section 244(c)(1)(A)(iii) of the Act. 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.

In an attempt to establish that he is a native and citizen of El Salvador, the applicant submitted, with his initial TPS application, a copy of a "Cedula de Identidad Personal" that appears to have been issued on October 20, 1989. The identification was not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3). Also, the record does not contain the birth certificate of the applicant.

The authenticity of the identification is questioned. It is noted that file contains Form I-213, Record of Deportable/Inadmissible Alien, indicating that the applicant was encountered by Service officers in the Cameron County Jail [Texas] on September 9, 1998, after his arrest for possession of cocaine. He stated at that time that his name is that he was born in Mexico and is a native and citizen of Mexico, and that he entered the United States near Brownsville, Texas, on or about June 1998. A Warrant of Removal/Deportation, Form I-205, was issued on October 8, 1998, in Harlingen, Texas, and the applicant was removed to Mexico on October 8, 1998.

It is noted that the nationality the applicant claimed and/or established at the time he first came into contact with the Service (now, the Department of Homeland Security) was that of Mexico, and that an immigration judge ordered the applicant removed from the United States to Mexico. The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Mexico is not a foreign state designated under section 244 of the Act. Therefore, the applicant is ineligible for TPS.

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.