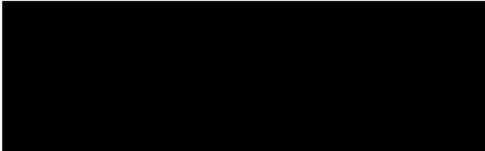




U.S. Citizenship
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Services

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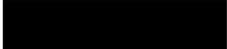
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MAR 08 2007

FILE:



Office: TEXAS SERVICE CENTER Date:

MAR 08 2007

[SRC 01 215 54924]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The director subsequently dismissed the applicant's motion to reopen and reconsider the matter, and the matter is now before the Administrative Appeals Office (AAO) 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 director denied the application on June 18, 2002, because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On August 15, 2003, the applicant filed a motion to reopen and reconsider. On motion, the applicant stated that he never received the Notice of Denial dated June 18, 2002. The applicant further stated that he only found out his application for TPS had been denied when he received a Notice of Decision dated July 30, 2003, denying his Form I-765, Application for Employment Authorization because his Form I-821, Application for Temporary Protected Status, had been denied.

On January 21, 2004, the director correctly dismissed the applicant's motion to reopen and reconsider because it was not timely filed.

On February 10, 2004, the applicant filed an appeal with the AAO. The applicant asserts that his motion to reopen and reconsider was timely filed on August 15, 2003, because his application for employment authorization was denied on July 30, 2003.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (v) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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.

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 offenses:

- (1) On December 20, 1990, the applicant was arrested in Miami, Florida, and charged with attempted burglary in violation of section 810.08 of the Florida statute, a felony. The applicant was subsequently convicted of the reduced charge of attempted burglary of an occupied dwelling in violation of section 810.02 of the Florida statute, a first-degree misdemeanor. (Case Number [REDACTED]) The applicant was also convicted of trespassing, a misdemeanor. (Case Number [REDACTED])
- (2) On December 15, 1993, the applicant was arrested in Miami, Florida, and charged with drinking in public, a misdemeanor. Prosecution was declined in this case on January 6, 1994. (Case Number [REDACTED])
- (3) On January 13, 1994, the applicant was arrested in Miami, Florida, and charged with drinking in public, a misdemeanor. Prosecution was declined in this case on February 3, 1994. (Case Number [REDACTED])
- (4) On November 9, 1999, the applicant was arrested in Miami, Florida, and charged with drinking in public a misdemeanor. The charge was dismissed on November 10, 1999. (Case Number [REDACTED])

On appeal, the applicant asserts that the director was incorrect in his determination that the applicant failed to file his prior motion to reopen and reconsider within 30 days of the Notice of Denial. The applicant states that he received the Notice of Decision denying his Form I-765, Application for Employment Authorization, on July 30, 2003, and he filed his motion to reopen and reconsider within 30 days of that date.

There is no appeal from the denial of an application for employment authorization. The Notice of Denial dated June 18, 2002, was mailed to the applicant at his most current address of record, and there is no indication in the record that the decision was returned to CIS as undeliverable mail. The director's decision clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). The applicant filed a motion to reopen and reconsider rather than an appeal, but he was still required to file a motion within thirty days after the service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the appeal, in this case, the motion or appeal should have been filed on or before June 21, 2002. The motion was received at the California Service Center on August 15, 2003. Therefore, the director correctly dismissed the motion as untimely filed and the director's decision will be affirmed.

Beyond the decision of the director, the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in No. 1 above. 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

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.