



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: California Service Center

Date: **MAR 16 2007**

[WAC 05 197 74481]

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.

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 during the initial registration period, the applicant filed an initial TPS application on March 20, 2001, under CIS receipt number SRC 01 144 59440. The Texas Service Center Director denied that application, on January 11, 2005, as the applicant was inadmissible under section 212 (a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182, because the applicant had been convicted for marijuana possession. The director noted that on January 18, 2001, the applicant was convicted, on a guilty plea, for Possession of Marijuana, and was sentenced to 24 days confinement.

The record reflects that the applicant filed a motion to reopen on March 29, 2005, after the requisite period. The Texas Service Center Director denied the motion to reopen on May 17, 2005, after concluding that the applicant failed to overcome the original grounds for denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 17, 2005, and indicated that he was re-registering for TPS benefits. The California Service Center Director denied the re-registration application, on December 13, 2005, 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 asserts that the applicant is eligible for TPS, and states that the amount of marijuana found on the applicant was half of a cigarette. In support of his assertion, counsel references an exception, for less than 30 grams of marijuana, under section 237(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227.¹

Counsel's reference to section 237(a)(2)(B)(i) is not applicable. Section 237(a) of the Act pertains to classes of deportable aliens, and provides an exception, under section 237(a)(2)(B)(i), to the deportability provisions for aliens convicted of a single offense involving possession for one's own use of 30 grams or less of marijuana.

Section 212 of the Act addresses classes of inadmissible aliens. The applicant is also inadmissible to the United States under section 212(a) (2)(A)(i)(II) of the Act because he has been convicted of a drug-related offense. However, since the conviction involved simple possession of less than 30 grams of marijuana, there is a waiver available for this ground of inadmissibility. A waiver application was neither requested by the director, nor furnished by the applicant or counsel. Therefore, at this time, CIS will not make a determination as to the applicant's ineligibility for TPS based on his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

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.

¹ In referring to an exception for less the 30 grams of marijuana, Counsel incorrectly cited section 237(a)B(i). However, that exception is under section 237(a)(2)(B)(i) of the Act.

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 on this ground will be affirmed.

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.