



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 26 2007

[WAC 05 250 70322]

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.

for Robert P. Wiemann, Director  
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 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 April 24, 2001, under CIS receipt number WAC 01 189 51269. The director denied that application on September 17, 2004, because the applicant had been convicted of two misdemeanors, and therefore, is ineligible for TPS. The record does not reflect that the applicant filed an appeal or a motion to reopen the decision to deny the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 7, 2005, under CIS receipt number WAC 05 250 70322, and indicated that he was re-registering for TPS.

The director denied that application on September 30, 2005, because the applicant's prior TPS application had been denied and the applicant was ineligible for re-registration.

On appeal, the applicant reasserts eligibility for TPS, and states that there is insufficient reason to deny his application. With the appeal, the applicant submits a final court disposition from the Superior Court of California, County of Los Angeles for a case filed on October 23, 2000.

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. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the record reflects that the applicant has two misdemeanor convictions:-

1. On October 23, 2000, the applicant was convicted, in San Fernando, California, on a guilty plea, by the Superior Court of California, of violating "23152 (B) VC - .08% MORE WGHT ALCHL DRIVE," a misdemeanor. The court imposed a sentence of 36 months probation, plus fines; and,
2. On February 2, 2004, the applicant was convicted, in Ventura, California, by the Superior Court of California, of violating "23152 (B) VC - .08% PERCENT," a misdemeanor. The court imposed a sentence of 36 months probation, plus fines.

An alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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 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.

The applicant is ineligible for TPS as he has at two misdemeanor convictions. Therefore, the application must also 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.