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U.S. Citizenship  
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Services

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FILE:



Office: California Service Center

Date:

MAR 26 2007

[WAC 05 190 72378 as it relates to SRC 01 141 54084]

IN RE:

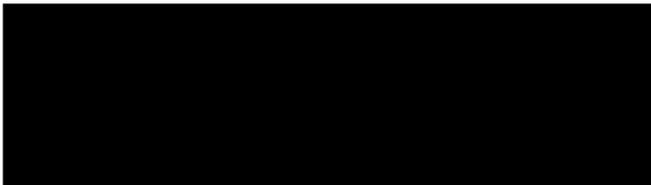
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF APPLICANT:



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 for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn; and the applicant's re-registration application was denied by the Director, California Service Center. The matter 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 an initial TPS application on March 16, 1999, under CIS receipt number SRC 01 141 54084. The Texas Service Center Director approved that application on October 25, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 8, 2005, under CIS receipt number WAC 05 190 72378, and indicated that he was re-registering for TPS.

The California Service Center Director simultaneously withdrew the applicant's TPS and denied the re-registration application, on July 6, 2006, as the applicant failed to respond to an August 30, 2005, Notice of Intent to Withdraw, to provide the final court disposition of his arrest, on March 8, 2004, by the Houston, Texas, Police Department.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The regulations under 8 C.F.R. § 244.14(a)(1) and (3) further state that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

It is noted that the record reflects that on October 6, 2005, the applicant was found guilty and convicted, by the Harris County District Court, Texas, of Kidnapping (3<sup>rd</sup> degree), a felony, in a jury trial. The Court imposed a suspended sentence of nine years, plus \$9,000.00 fines, and \$347.00 for costs.

On appeal, counsel asserts that there has not been a final disposition of the criminal matter as the criminal conviction is now under appeal. Counsel requests that a final decision be abated until the Texas Court of Appeals has decided the appeal of the jury verdict. Counsel does not submit any additional evidence on appeal.

The court record, however, clearly shows that the applicant was convicted of a felony, described above. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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.

The record reveals a felony conviction for the applicant. Therefore, the applicant is ineligible for TPS due to his record of a felony conviction, detailed above, and he is not eligible to re-register for TPS. Section 244(c)(2)(B)(i)

of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS, and deny the re-registration application, will be affirmed.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. It is also noted that the applicant is inadmissible as he has been convicted of Kidnapping (3<sup>rd</sup> degree), a crime involving moral turpitude. Therefore, for this additional reason, the applicant is ineligible for Temporary Protected Status.

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.