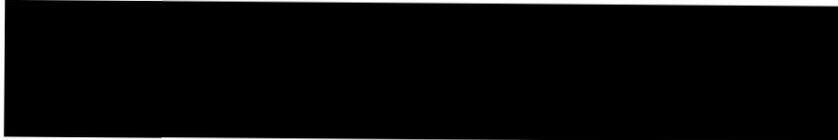




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 21 2007**

[WAC 05 223 77234]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 October 1, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 02 033 56392. The Director, Vermont Service Center (VSC), denied that application on June 21, 2004, because the applicant had been convicted of two misdemeanor offenses committed in the United States. 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 May 11, 2005, and indicated that he was re-registering for TPS.

The Director, California Service Center, denied the re-registration application on August 8, 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, the applicant asserts that he never received the VSC director's denial decision dated June 21, 2004. He requests reconsideration because he has been in the United States since April 1998.

A review of the record of proceeding indicates that the VSC director's notice of decision to deny the application dated June 21, 2004, was mailed to the applicant's most recent address at that time ([REDACTED]). There is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notice was returned to the CIS as undeliverable.

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).

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 the following offenses:

- (1) On December 10, 2000, in Arlington, Virginia, the applicant was arrested for driving while under the influence of alcohol or drug, Virginia Code § 18.2-266, a misdemeanor. On March 2, 2001, in the Fairfax County General District Court, Virginia, the applicant was convicted of the offense. He was sentenced to 180 days in jail, suspended, and placed on probation for a period of 12 months, and he was ordered to pay \$460 in fines and costs.
- (2) On December 20, 2000, in Fairfax County, Virginia, the applicant was arrested for obtaining money by false pretense with the intent to defraud, Virginia Code § 18.2-178, a felony. On September 19, 2001, in the Fairfax County General District Court, Virginia, the applicant was convicted of the lesser offense of obtaining money by false pretense, a misdemeanor. He was sentenced to 11 months in jail, 5 months suspended, and placed on probation for a period of 12 months, and he was ordered to pay \$212 in fines and costs.
- (3) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on May 7, 2001, in Chesterfield, Virginia, the applicant was arrested for obtaining money by false pretenses. It is not clear in the record whether this arrest relates to No. (2) above.
- (4) The FBI report indicates that on May 1, 2004, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for driving under the influence of alcohol/drugs. The final court disposition of this arrest is not included in the record.

The applicant was convicted of at least two misdemeanors and his convictions continue 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). There is no waiver available for this ground of ineligibility. Therefore, the application must be denied for this reason.

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.