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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 29 2007

[WAC 05 189 76889]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and 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 July 26, 2001, under CIS receipt number WAC 01 259 61500. The director denied that application on February 10, 2004, because the applicant had two felony convictions, and therefore, is ineligible for TPS. The record reflects that, on September 23, 2004, the applicant filed a late motion to reconsider the decision to deny the application. The director dismissed the motion, as untimely, on June 9, 2005. After a review of the record, the Chief, AAO concurs with the director's denial decision dated, September 23, 23, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 7, 2005, under CIS receipt number WAC 05 189 76899, and indicated that she was re-registering for TPS.

The director denied that application on April 19, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

Beyond the decision of the director, the applicant is not eligible for TPS because she has been convicted of at least one felony.

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.

It is noted that the record of proceedings, and the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested by the Sheriff's Office San Jose, California, on June 9, 1993, and charged with "F L&L ACTS W/CHILD UND 14 YRS. On July 17, 1993, the applicant was convicted, on a guilty plea, of violating PC 288(a), "LEWD/LASCIV/CONDUCT W/CHILD", a felony, and sentenced to 3 years probation, 192 days in jail, plus fines, restitution, fees, and costs.

The applicant remains ineligible for TPS due to her record of a felony, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application will 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.