



U.S. Citizenship
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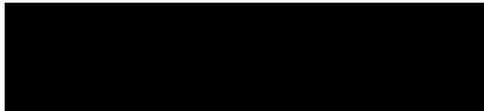
Office: California Service Center

Date: OCT 05 2007

[WAC 05 117 73689]

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, Chief
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 March 13, 2001, under CIS receipt number LIN 01 133 51264. The District Director, Denver District Office, denied the application, on July 14, 2005, because the applicant had two misdemeanor convictions. The director noted that the applicant plead guilty to "Driving While Ability Impaired C.R.S. 42-4-1301(1)(b)" on October 15, 2000, and again on May 25, 2002. The record does not reflect that the applicant filed an appeal.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 25, 2005, under CIS receipt number WAC 05 117 73689, and indicated that he was re-registering for TPS. The director denied this application on April 19, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, the applicant states he has taken various steps to be a better human being. With his appeal, the applicant submits court dispositions, earlier submitted, which confirms convictions that:-

- 1) On November 3, 2000, the County Court, Weld County, Colorado, convicted the applicant, on a guilty plea, of "Driving While Ability Impaired," a misdemeanor. The court imposed a sentence of 18 months probation, plus fines and costs, and other restrictions; and,
- 2) On November 27, 2002, the County Court, Arapahoe County, Aurora, Colorado, convicted the applicant, on a guilty plea, of "Driving While Ability Impaired," a misdemeanor. The court imposed a sentence of 365 days jail, suspended upon successful completion of 12 months supervised probation, plus fines and costs, and other restrictions.

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.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the re-registration application must also be affirmed for this reason.

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.

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.