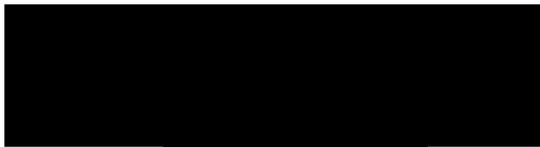




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE: [REDACTED]
[EAC 06 285 71729]

Office: Vermont Service Center

Date: SEP 04 2007

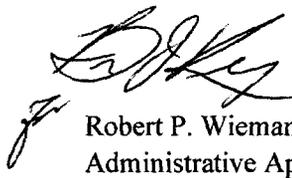
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 an initial TPS application on April 23, 2001, under CIS receipt number SRC 01 192 57132. The Director, Texas Service Center, denied that application on November 20, 2003, because the applicant had been convicted of a felony or two or more misdemeanors. The record reflects that the AAO Director (now Chief) dismissed a subsequent appeal and affirmed the director's decision, on March 28, 2005.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 10, 2005, under CIS receipt number WAC 05 161 75302, and indicated that he was re-registering for TPS. The director, California Service Center, denied that application on August 12, 2005, as the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant appealed the director's decision. The applicant's appeal will be addressed in a separate decision issued simultaneously with this decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 12, 2006, under CIS receipt number EAC 06 285 71729, and indicated that he was filing an initial TPS application. The Director, Vermont Service Center, denied that application on January 30, 2007, because the applicant had been convicted of a felony. The director also determined that the applicant was inadmissible under 212(2)(A)(i)(I) of the Act, based on his felony conviction.

On appeal, the applicant states that the denial was in error, because his conviction for second degree assault is a misdemeanor, rather than a felony, under Minnesota law. However, as discussed below, the second degree assault crime meets the definition of a felony for immigration purposes.

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 record of proceedings contain final court dispositions which reveal the following:

- 1) On May 30, 1990, in the Judicial Court of the State of Minnesota, County of Otter Trail, Case No. [REDACTED] (arrest date February 3, 1990), the applicant was convicted of assault in the second degree, in violation of [REDACTED], a felony. He was sentenced to 21 months in jail. The court deferred execution of jail, with credit for 101 days for pre-sentencing confinement; and,
- 2) On November 15, 1989, in the State of North Dakota, Grand Forks Municipal Court, Case No. [REDACTED] the applicant was convicted of theft of property. The degree or classification of this crime is not reflected on the court record. The applicant was required to pay \$25 in costs.

The applicant is ineligible for TPS due to his felony conviction, detailed in No. 1 above, and because he is inadmissible to the United States pursuant to section 212(a)(20)(A)(i)(I) of the Act. 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 application for this reason will be affirmed.

Beyond the decision of the director, the applicant indicated that he was filing a late initial application for TPS; however, there is no evidence in the file to establish that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2). Consequently, the application must also be denied for this reason.

It is noted in the record that the applicant was removed from the United States to El Salvador on May 23, 1990.

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.