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FILE: [REDACTED]  
[WAC 05 161 73899]

Office: CALIFORNIA SERVICE CENTER

Date **JUL 11 2008**

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 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, reopened and denied again, by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 a TPS application during the initial registration period under CIS receipt number WAC 02 045 56713. The director denied that application on March 24, 2003, because the applicant failed to maintain eligibility for TPS. Specifically, the director determined that the applicant had been convicted of a felony drug-related offense. On July 1, 2005, the AAO rejected the applicant's appeal as untimely and improperly filed. The AAO confirmed that the applicant's felony conviction rendered him ineligible for TPS.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 9, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The application was subsequently reopened and denied again due to a felony conviction.

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.

Furthermore, an alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

In addition, 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.

Court dispositions provided by the applicant confirm the following criminal record in California:

1. On March 5, 2001, the applicant was convicted in the Superior Court of California, County of Alameda, Livermore-Pleasanton-Dublin Judicial District, of the possession of an instrument or tool with the intent to feloniously break and enter into a building or vehicle in violation of section 466 PC, a misdemeanor. (Case #97377). The applicant was sentenced to incarceration for a period of 30 days.
2. On December 28, 2001, the applicant was convicted in the Superior Court of California, County of Santa Clara, of possession of a controlled substance in violation of section 11350(a) H&S, a felony. (Docket # BB155376). The applicant was sentenced to incarceration for a period of four months.

The applicant is ineligible for TPS due to his felony conviction detailed in No. 2 above. The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to this drug-related conviction.

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.