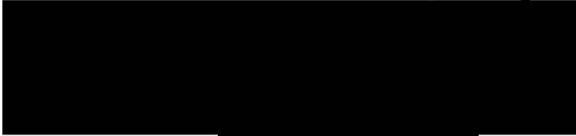




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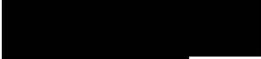
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 01 2008

[WAC 08 07450348, appeal]

[WAC 05 228 77326]

INRE:

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 California Service Center. 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 stated to be 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 director denied the application because the applicant was convicted of two misdemeanors committed in the United States. The director also determined the applicant had not met the continuous residence and continuous physical presence requirements for TPS.

On appeal, the applicant states that he has only been convicted of one misdemeanor and indicates that he is submitting a court disposition document stating the one misdemeanor. He requests that his application be approved. The applicant submits a Superior Court of California, County of Los Angeles, document dated December 28, 2007, certified by a Court Services Assistant that indicates that besides case # [REDACTED] no other record was found. It is noted that no further court disposition document was submitted **on appeal**.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such **date** as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of **status**, adjustment of **status**, asylum, voluntary departure, or any relief from removal that is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R § 244.4(a).

The regulations at 8 C.F.R § 244.1 define "felony" and "misdemeanor" as:

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 reflects that on October 11, 2005, the applicant was convicted of avoiding registration compliance and giving false information to a peace officer by a Judge of the Superior Court of California in the County of Los Angeles, both misdemeanors. (Case No. _____ -

The applicant is ineligible for TPS due to his record of 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 application for this reason is affirmed.

After review of the **record**, It is determined that the applicant has provided convincing evidence to establish his continuous residence and continuous physical presence during the required time periods. 8 C.F.R § 244.2 (b) and (c). Consequently, the director's decision is not affirmed for these two reasons.

Beyond the decision of the director, the applicant has provided no further evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R § 244.2(a) and § 244.9(a)(1). The application is denied for this additional 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.