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U.S. Citizenship
and Immigration
Services

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FILE# [REDACTED]
[SRC 03 240 54303]

OFFICE: TEXAS SERVICE CENTER DATE: MAY 09 2015

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims 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 after finding that the applicant had been convicted of a felony. The director also determined that the applicant had failed to establish his eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such 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 which 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. 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 reveals the following offense:

On November 17, 1997, the applicant was arrested by the Metro-Dade, Florida, Police Department, and charged with CARRYING CONCEALED WEAPON.

In response to the Final Notice of Intent to Deny and Revoke, the applicant submitted photocopies of the following documentation:

1. Circuit Court of the Eleventh Judicial Circuit in and For Dade County, Florida, Finding of Guilt and Order Withholding Adjudication and Special Conditions, The State of Florida Vs. Jose Rene Amaya, finding the applicant "guilty of the charge of CARRYING A CONCEALED FIREARM AND POSSESSION OF A FIREMARM BY AN INTOXICATED PERSON AS SET FORTH IN COUNTS 1 & 2 OF THE INFORMATION," recorded on February 25, 1998, (Case Number [REDACTED])
2. A Miami-Dade County, Florida, Police Department records search dated February 12, 2004, indicating a record on file in the Local Felony Division and listing the case number as that also indicated on the court documents above;
3. The Complaint/Arrest Affidavit, Miami-Dade Police Department, dated November 18, 1997; and,
4. The Metropolitan Dade County Correction and Rehabilitation Department, Jail Booking Record, dated January 30, 1998.

The director found the applicant ineligible for TPS due to a felony conviction, and denied the application on April 8, 2004.

On appeal, the applicant states that the offense was a mistake on his part, that he intended no harm, and that he did not realize that carrying the weapon was a major offense. He states that he is now aware of the consequences and regrets having the weapon at that time.

Despite the applicant's remorse, he is ineligible for TPS due to his record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant established that he was eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 29, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On November 15, 2003, and again on January 31, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In the first notice, the applicant was also requested to submit evidence establishing: his nationality; his continuous residence in the United States since February 13, 2001; his continuous physical presence in the United States since March 9, 2001; and, photo identification. In the second notice, the applicant was also requested to submit certified court dispositions for his arrests. The applicant, in response, provided documentation relating to his arrest and criminal charges.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 8, 2004.

On appeal, the applicant states that he was unable to register during the initial registration period because he was sick, and his money was used to pay his medical bills. In support of the appeal, the applicant submits additional evidence consisting of: a letter asserting his employment since July 1997; NationsBank statements dated in 1999; appointment notices from Jackson Memorial Hospital, Miami, Florida, on October 25, 1999, for "Ortho Trauma Clinic," and on December 9, 1999, for "Traumatic Brain Injury;" a Notice of Hearing in Removal Proceedings scheduled for November 12, 1997, in Miami, Florida; and, a Notice of Change of Hearing Location for Immigration Proceedings, on November 12, 1997, at Miami, Florida.

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. It is noted that the applicant filed an affirmative application for asylum and withholding of deportation on March 31, 1997. The applicant was subsequently referred to the Immigration Judge, Miami, Florida, who issued an order of removal to El Salvador in absentia, on November 12, 1997. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will also be affirmed.

It is noted that the record contains a Warrant of Removal issued at Miami, Florida, on September 21, 1998, following the final order of removal issued by the Immigration Judge, Miami, Florida, on November 12, 1997.

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.