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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: APR 30 2007

[WAC 05 165 70922]

[WAC 06 236 53786, appeal]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 May 15, 2001, under CIS receipt number WAC 01 227 51298. The director approved that application on July 16, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 14, 2005, under CIS receipt number WAC 05 165 70922, and indicated that he was re-registering for TPS.

The director withdrew the applicant's temporary protected status pursuant to 8 C.F.R. § 244.14(a)(3), 8 C.F.R. § 244.17(c). The director simultaneously denied the re-registration application, due to abandonment, on June 5, 2006, as the applicant failed to submit final court dispositions pertaining to three arrests, as requested by the director in an August 31, 2005, notice of intent to withdraw TPS.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial is dated June 5, 2006. Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before July 8, 2006. The appeal was properly received at the California Service Center on July 24, 2006.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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.

With his appeal, the applicant submitted final court dispositions which reflect that he has been convicted of at least two misdemeanors, thereby rendering him ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

- 1) On March 10, 2004, the Superior Court of California, County of Contra Costa, Richmond, California, convicted the applicant, on a nolo contendere plea, of a violation of Section "CVC 23152 (b)." The applicant was sentenced to 3 years probation and 2 days jail, plus \$1,475.00 fines.
- 2) On February 28, 2005, the Superior Court of California, County of Contra Costa, Richmond, California, convicted the applicant, on a nolo contendere plea, of a violation of Section "CVC 12500 (a)," an infraction. The applicant was fined \$ 100.00.
- 3) On April 27, 2006, the Superior Court of California, County of Contra Costa, Richmond, California, convicted the applicant, on a guilty plea, of a violation of "32 PC (17 PC)", a misdemeanor. The applicant was sentenced to 3 years probation and 60 days jail, plus fees.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is other eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.