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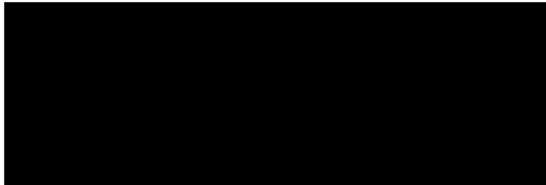
OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 14 2007

[WAC 05 212 74136]

IN RE:

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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 a TPS application during the initial registration period on September 24, 2001, under receipt number WAC 01 296 55134. The director denied that application on February 27, 2004, because the applicant had been convicted of a felony offense. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 30, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on October 24, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant submits additional evidence in an attempt to establish his residence and physical presence in the United States.

An alien shall not be eligible for temporary protected status 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 8 C.F.R. § 244.4(a).

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.

The record of proceeding contains the records of the Superior Court of California, County of Los Angeles, indicating that on December 3, 1994, the applicant (name used: [REDACTED]) and a co-defender were arrested for transport/sell narcotic controlled substance, H&S 11352(A), a felony. On January 26, 1995, the applicant entered a plea of *nolo contendere*, and the court found him guilty of the crime. He was placed on probation for a period of 3 years, and ordered to serve 180 days in the county jail.

The applicant was convicted of a felony offense and his conviction continues to preclude a favorable finding of eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. Section 244(c)(1)(A)(iii) of the Act. There is no waiver available to an alien found inadmissible under this section. 8 C.F.R. § 244.3(c)(1). Nor is there a waiver available for convictions of a felony or two or more misdemeanors committed in the United States.

The applicant is filing the current TPS application as a re-registration; however, 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.

The record, under file number [REDACTED] contains Form I-205, Warrant of Deportation, issued in Dallas, Texas, on November 9, 1994, based on the final order of removal by an Immigration Judge (IJ) on November 2, 1994. Additionally, in removal proceedings held on March 14, 1995, in Los Angeles, California, under file number [REDACTED], the IJ ordered the applicant removed from the United States to Mexico.¹ Form I-205 was subsequently issued, and the applicant was removed from San Ysidro, California, afoot, to Mexico on March 15, 1995.

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.

¹ It is noted that the applicant was encountered during his incarceration on February 21, 1995, and stated to officials that he was born in Mexico.