



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: California Service Center Date: MAR 09 2007  
[WAC 05 161 80579]

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

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 in October 2001, under CIS receipt number WAC 02 033 58397. The director denied that application, on March 5, 2004, because the applicant failed to establish his requisite continuous residence and continuous physical presence, his identity and nationality, and failed to submit the final court disposition for an arrest on January 16, 1993, by the Mountain View Police Department. The director noted that the applicant's response failed to fully comply with the director's request in a notice of intent to deny. A subsequent appeal to the AAO was rejected, as untimely, on March 25, 2006. The record does not reflect that the applicant filed a motion to reopen or reconsider the AAO rejection decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 10, 2005, under CIS receipt number WAC 05 161 80579, and indicated that he was re-registering for TPS.

The director denied the re-registration application, on April 20, 2006, 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 states that he did not comply with the passport requirement because he received his passport after the due date, and he would like the opportunity to remain legally in the United States. With the appeal, in an attempt to establish eligibility for TPS, the applicant submits a photocopy of the biographic page of his El Salvador passport, and a letter from the County Court of California, County of Santa Clara, dated August 3, 2005, stating that the court's records reflect an arrest was made, however, no complaint was filed.

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.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his subsequent TPS re-registration application, reflects that the applicant was arrested on January 16, 1993 by the Police Department Mountain View, California, and charged with, Count 1: Driving Under the Influence of Alcohol; Count 2: Driving with a 0.08 or Higher Blood Alcohol; and Count 3: Giving False Name to Peace Officer. The record of proceedings reflects convictions on counts 2, and 3, and a sentence of 20 days jail, and a three year probationary sentence.

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 of proceedings reveals misdemeanor convictions for the applicant. Therefore, the applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application must also be 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.