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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[WAC 05 154 72255]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 29 2007

IN RE: Applicant:

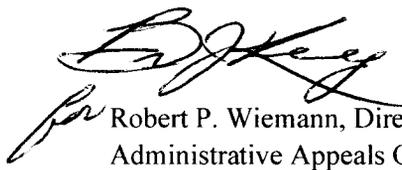


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
for Robert P. Wiemann, Director  
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 on May 4, 2001, under CIS receipt number WAC 01 197 51935. The director denied that application, on April 28, 2004, due to abandonment because the applicant failed to respond to a request for evidence. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 3, 2005, under CIS receipt number WAC 05 154 72255, and indicated that he was re-registering for TPS.

The director denied that application on August 1, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

Beyond the decision of the director, the applicant is not eligible for TPS because he has been convicted of at least one felony, or two or more misdemeanors.

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.

It is noted that the record of proceedings, and the applicant's Federal Bureau of Investigation (FBI) fingerprint result report reflects that:

- 1) The applicant was arrested by the Police Department, Los Angeles, California, on March 28, 2003, and charged with Burglary;
- 2) The applicant was arrested by the Police Department, Downey, California, on July 1, 2004, and charged with "DISRD CONDUCT, DRUG W/ALC.
- 3) The applicant was also arrested by the Police Department, Los Angeles, California, on January 29, 2005, and charged with DUI ALCOHOL/DRUGS.
- 4) The record indicates that on January 31, 2005, the applicant admitted to the Superior Court of California, County of Los Angeles that he had been convicted (under case number 5MT00985) of violating 23152(B) VC – .08% MORE WGHT ALCHL DRIVE VEH.
- 5) The court disposition record reveals that on July 1, 2005, the Superior Court of California, County of Los Angeles, convicted the applicant, on nolo contendere pleas, of: Count 1. Violating 23152(B) VC – .08% MORE WGHT ALCHL DRIVE VEHICLE; and, Count 2. of violating 16028(A) VC – NO PROOF OF CAR INSURANCE. The applicant was sentenced to 60 months summary probation, 90 days in jail, plus fines and fees, and the court imposed additional restrictions.
- 6) On August 29, 2005, the applicant was convicted by the Superior Court of California, County of Los Angeles, of TAMPERING, and sentenced to 24 months summary probation, 90 days in jail.

The applicant remains 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 will also be denied for this reason.

The AAO notes that the final court dispositions for all of the applicant's arrests are not in the record of proceeding. CIS must address these arrests and any other convictions in any future proceedings.

It is also noted that the record reveals that the applicant was placed in Removal Proceedings, and ordered removed to El Salvador, on September 11, 2006, by an Immigration Judge.

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.

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.