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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: MAY 30 2007

[WAC 05 198 71852]

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 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 24, 2001, under CIS receipt number WAC 01 235 52422. The director denied the application, on March 8, 2004, because the applicant failed to submit final court dispositions for two arrests requested in a notice of intent to deny. The director noted that the applicant submitted only two pages of a three-page court disposition for an arrest on May 20, 1989. In addition, the applicant did not submit a court disposition for an arrest on March 25, 1993. The director, therefore, determined that the applicant did not establish eligibility for TPS. A subsequent appeal was dismissed by the Director of the AAO, in a decision issued simultaneously with this decision. The AAO Director concurred with the director's decision, and also dismissed the appeal because the applicant had at least one felony conviction.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 16, 2005, under CIS receipt number WAC 05 198 71852, and indicated that he was re-registering for TPS.

The director denied that application on January 24, 2006, because the applicant's prior TPS application had been denied and the applicant was ineligible for re-registration.

On appeal, the applicant reasserts his claim of eligibility for TPS. With the appeal, the applicant submits a court summary of an Arraignment and Plea, dated May 23, 1989; and a letter from the Los Angeles Police Department, dated February 10, 2006, pertaining to an arrest on March 25, 1993.

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.

Beyond the decision of the director, 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.

As noted by the director, in denying the initial TPS application, the applicant's response to the notice of intent to deny included some, but not all, of the evidence requested. The applicant gave no reasonable explanation for his failure to comply with the director's request. Therefore, the director's decision to deny the application for failure to establish eligibility for TPS is affirmed.

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).

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Misdemeanor means a crime committed in the United States, either

- (3) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (4) 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:

- 1) On May 20, 1989 the applicant was arrested by the Los Angeles Police Department, and charged (under Agency Case Number [REDACTED] with the offense of GIVE TRANSPORT ETC MARIJ OVER 28/5 100 GRAMS. On July 7, 1989, the Superior Court of California, County of Los Angeles, convicted the applicant, on a guilty plea, of violating Section 11360 (A) HS-GIVE/ETC MARIJ OVER 1 OZ/28.5 GRM, a felony. The applicant was sentenced to 3 years probation (with credit for 72 days spent in jail), fined \$50.00, and ordered to pay \$100.00 restitution.

- 2) On March 25, 1993, the applicant was by the Los Angeles Police Department (Agency Case Number [REDACTED]), and charged with Count 1 – M Battery on PO/Fireman; and, Count 2 – M WRT SELL FURN ETC MARIJ HASH OVER 1 OZ. On April 19, 1993, the Superior Court of California, County of Los Angeles, convicted the applicant of violation of probation. The court imposed a sentence of 180 days in jail (with credit for 39 days).

- 3) On March 25, 1993, the applicant was arrested by the Los Angeles Police Department (Agency Case Number [REDACTED]), and charged with Count 1 – M Battery on PO/Fireman; and, Count 2 – M WRT SELL FURN ETC MARIJ HASH OVER 1 OZ. The applicant submitted a letter from the Los Angeles Police Department, Records and Identification Division, pertaining to a charge of PC 243(B) Battery – Peace Officer (M). The statement indicates that the applicant was released on June 10, 1993, for “D.A. Rejection – Detention only. No Case Filing Information Found In Los Angeles County.” There is no indication of the outcome of Count 2.

The applicant is ineligible for TPS due to his record of a felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, for this reason also, the director's decision to deny the application will be affirmed.

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.