



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:



Office: California Service Center

Date: NOV 06 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn; and the applicant's re-registration application was denied by the Director, California Service Center. The matter 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 March 26, 2001, under CIS receipt number WAC 01 168 55752. The Director, Texas Service Center, approved that application on September 21, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 3, 2005, under CIS receipt number WAC 05 215 71728, and indicated that he was re-registering for TPS.

The California Service Center Director simultaneously withdrew the applicant's TPS and denied the re-registration application, on September 13, 2006, as the record of proceedings established that the applicant had been convicted of at least two misdemeanors.

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 state 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".

It is noted that the record reflects that on October 6, 2005, the applicant was found guilty and convicted, by the Harris County District Court, Texas, of Kidnapping (3<sup>rd</sup> degree), a felony, in a jury trial. The Court imposed a suspended sentence of nine years, plus \$9,000.00 fines, and \$347.00 for costs.

On appeal, the applicant states that he has complied with the court imposed sentence; that he is now a changed person; and, asks for the opportunity to re-register for TPS. With his appeal, the applicant submits documentation pertaining to his compliance with the court's imposed sentence.

The court record, however, clearly shows that the applicant was convicted of two misdemeanors. Specifically, on November 17, 2004, the Superior Court of California, County of Orange, Santa Ana, California, convicted the applicant, on guilty pleas, of:

1. A violation of Section 23152(a) VC, a misdemeanor. The court suspended imposition of sentence, and placed the applicant on 3 years informal probation, and imposed fines and costs, and other restrictions; and,
2. A violation of Section 23152(b) VC, a misdemeanor. The court stayed sentencing.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation, if at the time of the initial registration period:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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 applicant is ineligible for TPS due to his record of two misdemeanors, detailed above, and he is not eligible to re-register for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS, and deny the re-registration application, will be affirmed.

As noted above, the record reveals that the applicant was apprehended on entry and was placed in Removal Proceedings, and ordered removed, *in absentia*, to El Salvador, on April 4, 1995, by the Immigration Judge.

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.