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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 15 2007
[WAC 05 147 70283]

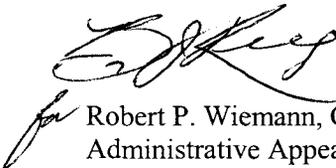
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 April 16, 2001, under receipt number WAC 01 190 52310. The director denied that application based on abandonment on December 13, 2004, after determining that the applicant, in response to the request for evidence (RFE) dated September 2, 2004, had failed to submit the final court dispositions of all of his arrests. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 24, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 13, 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, counsel asserts that the director committed error in denying the applicant's re-registration application because his initial TPS application was approved and was wrongfully revoked as he was not notified about additional requirements. He submits additional evidence.

These assertions of counsel are without merit. The fact that the applicant was approved employment authorization and issued Employment Authorization Documents is not evidence that the applicant was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued employment authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS. Additionally, the applicant was notified on September 2, 2004, that he had until December 2, 2004, to submit: (1) evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application; and (2) the final court dispositions of all of his arrests. He was advised that failure to submit all evidence requested at one time may result in the denial of the application. The record indicates that the applicant did, in fact, respond to the RFE and was received at the Service Center on December 7, 2004; however, because the applicant's response did not include the final court dispositions of all of his arrests, the director denied the initial application on December 13, 2004.

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

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).

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

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 reveals the following:

- (1) On appeal, the applicant submits court documents indicating that on December 24, 2003, in the Superior Court of the State of Arizona, County of Maricopa, EDC-Southeast, Case No. [REDACTED] (arrest date December 21, 2003), the applicant was indicted for Count 1, possession or use of marijuana, in violation of ARS 13-3405A1, a felony; and Count 2, possession or use of narcotic drugs (cocaine), in violation of ARS 13-3408A1, a felony. On January 7, 2004, the applicant was granted “deferred prosecution” as to both Counts 1 and 2. Also submitted is a letter from the Case Manager, TASC Adult Deferred Prosecution Program, Phoenix, Arizona, stating that the Maricopa County Attorney’s Office never filed charges against the applicant, that prosecution was deferred to treatment, and that the applicant attended the Adult Deferred Prosecution Program at TASC in lieu of being prosecuted. The applicant also submits an order of the Superior Court, County of Maricopa, Arizona, ordering that the case be dismissed based on the applicant’s successful completion of the requirement of the Maricopa County Attorney/TASC Drug Diversion Program. The record in this case shows that the applicant did not enter any plea, nor did the court find the applicant guilty of the offense; therefore, the applicant was not convicted within the meaning of section 101(a)(48)(A) of the Act.
- (2) The court records furnished by the applicant on appeal also contains the County Court of Maricopa “Release Questionnaire” under Case No. CR [REDACTED] (No. 1 above). On Paragraph E.2. of the questionnaire, “List any prior arrests, convictions, and/or F.T.A.’s,” the applicant wrote: “Theft.” The applicant had failed to submit the court’s final disposition of this arrest and/or conviction although he was requested on September 2, 2004, to submit any and all of his arrests.
- (3) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on November 20, 2001, in Mesa, Arizona, the applicant was arrested for “assault-intent/reckless/injure.” The FBI report indicates that the applicant was subsequently convicted of this offense and he was sentenced to 35 days in jail; however, the applicant had also failed to submit the actual final court disposition of this arrest.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. (2) and (3) above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is also noted that the FBI report indicates that the applicant was born in Mexico and that he is a citizen of Mexico. The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Mexico is not a foreign state designated under section 244 of the Act.

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.