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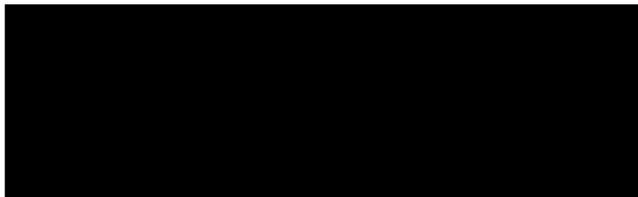


MI

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER
[incorporating [redacted]]
[WAC 05 125 77185]

Date: OCT 05 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 California Service Center. 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 claims to be 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 Form I-821, Application for Temporary Protected Status on April 23, 2001, under CIS receipt number LIN 01 175 50668. The Director, Nebraska Service Center, denied that application for abandonment, on March 11, 2002, because the applicant failed to respond, within 30 days, to a request for evidence. 8 C.F.R. § 103.2(b)(13). 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 a subsequent TPS application on March 29, 2002, under CIS receipt number LIN 02 148 51053. The District Director, Denver, denied that application, on March 30, 2006, because the applicant had been convicted of two misdemeanors, and therefore, was not eligible for TPS.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 2, 2005, under CIS receipt number WAC 05 125 77185, and indicated that he was re-registering for TPS. The director denied that application on August 31, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

It is noted that the applicant stated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed September 21, 2006, that an appeal brief will be submitted within 30 days. The applicant provided his new address on January 9, 2007; however, the record does not reflect receipt of an appeal brief. Also, the applicant did not submit any additional evidence on appeal. Therefore, the record must be considered complete.

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.

Although the applicant indicated that he was attempting to file a late initial application for TPS instead of an annual re-registration, there is no evidence in the file to establish that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for this reason is also 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).

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 applicant submitted the final court dispositions which reveal the following:-

On December 12, 2001, the County Court, Arapahoe County, Colorado convicted the applicant, on guilty pleas, of Count 2: Driving Under Restraint, a misdemeanor. The applicant was sentenced to 170 days jail, 2 years probation, plus fines, and additional restrictions; and, Count 3: Failure to Display Proof of Insurance, a misdemeanor. The applicant was sentenced to 365 days jail, and 2 years probation, and additional restrictions.

The applicant is ineligible for TPS due to his record of 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.

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:

1. On April 29, 2001, the applicant was arrested by the Police Department, Aurora, Colorado, and charged with Charge 1: ASLT SIMPLE; and, Charge 2: ASLT – BATTERY; and,
2. On August 18, 2003, the applicant was arrested by the Police Department, Denver, Colorado, and charged with Charge 1: MAKING FALSE REPORT; and, Charge 2: PUBLIC PEACE - PUBLIC FIGHTING.

The AAO notes that the final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests in any future proceedings.

Beyond the decision of the director, it is noted that although the record of proceedings contains an El Salvador birth certificate and English translation, the certificate was not accompanied by a photo identification to establish

the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for these reasons.

As noted above, the record reveals that the applicant was apprehended upon entering the United States on February 23, 1996, and was placed in Deportation Proceedings under the name [REDACTED]. The applicant claimed at that time that he was born in Tecunman, Guatemala, and that he had never resided outside of Guatemala before leaving the country to come to the United States. The applicant failed to appear at a scheduled hearing and was ordered deported to Guatemala, *in absentia*, on August 14, 1996, by an Immigration Judge. The record reveals an unexecuted Warrant of Removal.

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.