



U.S. Citizenship
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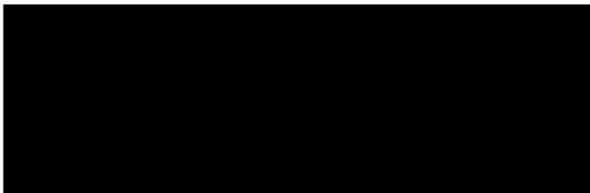
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 05 211 81623]

Date: OCT 05 2007

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:



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, Director
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 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 August 26, 2002, under CIS receipt number SRC 02 216 51926. The Director, Texas Service Center, denied that application on July 13, 2004, because the applicant had been convicted of two misdemeanors, and therefore, is ineligible for TPS. The record does not reflect that the applicant filed an appeal or a motion to reopen the decision to deny the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 29, 2005, under CIS receipt number WAC 05 211 81623, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on November 7, 2005, because the applicant's prior TPS application had been denied and the applicant was ineligible for re-registration.

On appeal, counsel asserts that the applicant is eligible for TPS. Counsel states that the applicant has had one misdemeanor conviction and there is insufficient reason to deny his application. With the appeal, counsel resubmits a criminal history report. However, counsel does not submit final court dispositions.

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.

It is also noted that the applicant's criminal history report reflects that the applicant has two misdemeanor convictions:-

1. On June 7, 1993, the applicant pled guilty to "TRESPASSING", a misdemeanor. Palm Beach County Judicial Circuit Court sentenced the applicant. The court record reflects that the applicant served time, but does not specify the length of detention.
2. On April 1, 1993, the applicant entered a *nolo contendere* plea to "OPEN CONTAINER". The Palm Beach County Judicial Circuit Court withheld adjudication. The record reflects that the court imposed various fines.

An alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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 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.

On appeal, counsel contends that the applicant has only one misdemeanor conviction as the court withheld adjudication on the “OPEN CONTAINER” charge.

However, counsel’s contention is without merit. Under section 101(a)(48) of the Act:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
 - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* [emphasis added] or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

As detailed above, the applicant has two misdemeanor convictions. Therefore, the application must also be denied for this reason.

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.