



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: California Service Center Date: OCT 30 2007
[WAC 05 218 77549]

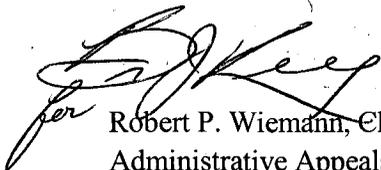
IN RE: Applicant: [REDACTED]

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 (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 August 31, 2002, under CIS receipt number WAC 02 280 55330. The Director, California Service Center, denied the application on September 30, 2003, because the applicant had two misdemeanor convictions. The director also noted that the applicant failed to submit a final court disposition for two additional charges. A subsequent appeal was rejected by the director because the applicant did not provide a copy of the denial decision. A subsequent motion to reopen was again rejected by the director on June 27, 2005, as untimely. On July 29, 2007, the applicant filed a motion to reconsider that was dismissed by the director on September 5, 2006. In dismissing the motion to reconsider, the director noted that the motion did not state the reasons for reconsideration and was not supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 6, 2005, under CIS receipt number WAC 05 218 77549, and indicated that he was re-registering for TPS. The director denied this application on June 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, counsel states that the CIS erred in rejecting the initial appeal because the applicant did not include a copy of the denial notice. Counsel does not state any additional basis for the appeal. Counsel does not submit any additional evidence on appeal.

As noted by the director, the applicant submitted court dispositions which confirms the following:-

- 1) On July 16, 2002, the Superior Court of California for the County of Siskiyou, convicted the applicant on a guilty plea of a violation of California Penal Code Section 114, a felony. On July 9, 2003, the guilty plea was stricken, and the applicant pled guilty to an amended charge, a violation of Penal Code Section 148 (A) (1), a misdemeanor. The court imposed a sentence of 31 days jail, and 2 years probation, plus \$528.00 fines and costs; and,
- 2) On January 25, 2001, the Superior Court of California for the County of Siskiyou convicted the applicant on a nolo contendere plea of a violation of California Penal Code Section 242 PC, a misdemeanor. The court sentenced the applicant to 3 days jail, and suspended imposition of sentence for 12 months sentence, plus a \$100.00 fine, and other restrictions.

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.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the re-registration application must also be affirmed for this reason.

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, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has not furnished a copy of a birth certificate and English translation. In addition, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. Therefore, the application must also be denied for these reasons. In addition, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States from February 13, 2001 and his continuous physical presence since March 1, 2001. Therefore, the application will also be denied for these reasons.

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.