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U.S. Citizenship  
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[REDACTED]

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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUL 23 2008**

[EAC 05 005 71559]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application 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 director denied the application because he found the applicant was not eligible for late registration, and was ineligible due to two or more misdemeanor convictions in the United States.

On appeal, the applicant asserts that he had a change of status application pending when he filed a May 12, 2005, application for TPS, and that he currently has an appeal pending for charges on his criminal record.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or
    - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this initial application with Citizenship and Immigration Services (CIS) on October 5, 2006.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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.

On March 7, 2006, the applicant was requested to provide additional evidence that he was eligible to file a late registration application for TPS. The record does not indicate the applicant responded.

The director concluded that the applicant was not eligible for late registration and denied the application on September 19, 2007.

On appeal the applicant asserts through counsel that CIS fails to take into account that the applicant filed an application for TPS on May 12, 2005, while he had an adjustment of status pending during the initial registration period. That application was denied on November 23, 2005, because the applicant was ineligible due to two or more misdemeanor convictions in the United States. The applicant's adjustment of status application was denied on March 10, 2004. Therefore, this initial application was not filed within the 60 day time period required to qualify for late initial registration.

The director's decision will be affirmed.

The next issue in this matter is the applicant's lengthy criminal record.

The record reveals the following offenses:

- (1) On September 19, 1988, the applicant was convicted of Driving Under the Influence of Alcohol, Sec. 23152(a)VC, and of obstructing a peace officer in violation of 148 PC, both are misdemeanors. Case No. [REDACTED]
- (2) On November 19, 1992, the applicant was convicted of VC 14601.1(a), a misdemeanor, in Anaheim, California. Case No. [REDACTED]
- (3) On November 19, 1992, the applicant was convicted of PC-Force/ADW, Sec. 245(A)(1), a misdemeanor, in Fullerton, California. Case No. [REDACTED]
- (4) On April 22, 1997, the applicant was convicted of Driving Under the Influence of Alcohol or Drugs, Sec. 23152(A) a misdemeanor, in Fullerton, California. Case No. [REDACTED]
- (5) On June 23, 2004, the applicant was convicted of Driving Under the Influence of Alcohol or Drugs, Sec. 23152(A) a misdemeanor, in Westminster, California. Case No. [REDACTED]

In addition, the record reveals the following charges for which the applicant has not provided the disposition:

- (6) On April 14, 1985, the applicant was arrested by the Anaheim Police Department and charged with possession of a controlled substance. Case No. [REDACTED]
- (7) On August 17, 1993, the applicant was arrested by the Fullerton Police Department and charged with Disorderly Conduct: Prostitution, and Obstruction/Resisting a Public Officer. Case No. [REDACTED]

On appeal, the applicant asserts that he is appealing his conviction.

The applicant is ineligible for TPS due to his record of two or more 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 application for this reason will be affirmed.

In addition, the applicant has failed to provide the final disposition for any and all charges on his criminal record. 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.