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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: DEC 22 2011 Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT: Self-represented

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 director denied the application because the applicant failed to establish he was eligible for late registration and because he had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that at the time the director denied his initial TPS application, "the charges had not been completely converted into sentences, later on those two charges, these same were discharged and or dismissed which in turned allowed me to be free from those misdemeanors" The applicant asserts that the director denied his initial application on January 9, 2002, but "the charges were not completely being processed by the Court until 12/31/2003 and 01/02/03 as the enclosed records show."

An alien shall not be eligible for TPS 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).

"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. 8 C.F.R. § 244.1.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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 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. Section 101(a)(48)(A) of the Act.

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 Secretary 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 TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2012, upon the applicant's re-registration during the requisite period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue to be addressed is the applicant's criminal history.

On appeal, the applicant claims that the charges were not completely processed by the court until January 2, 2003, and December 31, 2003. The applicant's assertion, however, is not persuasive. The record contains the following:

- Court documentation in Case no. [REDACTED] from the County Criminal Court of Tarrant County Texas, which indicates that on December 6, 2001, the applicant was convicted of "FLID", a Class B misdemeanor. The applicant was sentenced to serve 90 days in jail, ordered to perform community service, complete an approved alcohol education program and pay a fine and court cost and was placed on community supervision for a period of 12 months. The case was to run concurrent with all other cases.
- Court documentation in Case no. [REDACTED] from the County Criminal Court of Tarrant County Texas, which indicates that on December 6, 2001, the applicant was convicted of driving while intoxicated, a Class B misdemeanor. The applicant was sentenced to serve 90 days in jail, ordered to pay a fine, court cost, perform community service and complete an approved alcohol education program and was placed on community supervision for a period of 24 months.

The court documents submitted by the applicant clearly indicate that he was convicted of two misdemeanors on December 6, 2001. The applicant submits a court document titled 'Disposition' that indicates on December 31, 2003, the offense in Case no. [REDACTED] was discharged. However, this document only serves to indicate that the applicant was discharged from the court ordered two-year probation; it does not dismiss the conviction. Likewise, the court document titled "Discharging Community Supervision" dated January 2, 2003, specifically indicates that the applicant was hereby discharged from community service because he had paid all fines and costs assessed and had complied with the terms and conditions of community supervision in said case.

The court dispositions reflect that the applicant pled *guilty/nolo contendere* to the offenses and the judge ordered some form of punishment and a restraint on the applicant's liberty to each charge above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes. Section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the TPS application will be affirmed.

The second issue to be addressed is whether the applicant is eligible for late registration.

The record reflects that the applicant filed his initial TPS application ([REDACTED]) on May 8, 2001. On January 9, 2002, the Director, Texas Service Center, denied the application because the

applicant had been convicted of two misdemeanors. The applicant filed a motion to reopen, which was dismissed by the director on November 5, 2003, as the applicant did not overcome the basis for the denial of the application.

The applicant filed the current application on July 22, 2010.

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.

The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant's circumstances outlined on appeal do not meet any of the criteria described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

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 TPS 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.