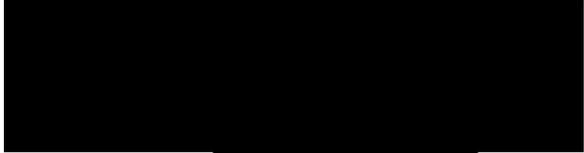


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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 04 026 51806 as it relates to EAC 02 032 54729]

Date: **DEC 27 2006**

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:

MIMI W. FEI
335 BROADWAY
SUITE 1108
NEW YORK, NY 10013

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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 applicant filed an initial application for TPS during the initial period. The director denied that application on July 11, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, on November 5, 2003, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible for late re-registration for TPS and he had been convicted of two or more misdemeanors.

If an alien is filing a re-registration application, 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.

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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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.

The initial registration period for El Salvador was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his current application with CIS on November 5, 2003.

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 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 CIS. 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 applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision is affirmed for this additional reason.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 record reflects the following offenses:

The applicant was charged (Docket #: [REDACTED]) under Section 205.30 of the New York Penal Law (NYPL) in the First District Court held at Central Islip, New York, for resisting arrest. On October 17, 2002, a Judge of the First District Court of Suffolk County found him guilty of a reduced charge of disorderly conduct (a violation) under Section 240.20 of the NYPL. The maximum penalty that the applicant faced for this violation was imprisonment not in excess of fifteen days and a fine.

The applicant was also charged (Docket #: [REDACTED]) under Section VTL 1192.3 for operating a motor vehicle under the influence of a drug or alcohol. On the same day (October 17, 2002), the same Judge found him guilty of a reduced charge of driving while his ability was impaired (a traffic infraction) under Section VTL 1192.1 of the NYPL. The maximum penalty that the applicant faced for this infraction was imprisonment not in excess of fifteen days and a fine.

Counsel argues that the applicant's two convictions did not constitute misdemeanors because one was merely a traffic infraction while the other was a violation which is a classification that does not come within the definition of a crime.

The fact that the State of New York classifies offense as violations or traffic infractions rather than as crimes has no bearing on the question of whether the offenses qualify as misdemeanors for immigration purposes. Except for offenses that are punishable for imprisonment for a maximum term of five days or less, a misdemeanor in this proceeding is defined as any offense that is punishable by imprisonment for a term of one year or less. In this case, the applicant was found guilty of two charges, each punishable by up to 15 days in jail. Therefore, both convictions are deemed misdemeanors for immigration purposes as defined by 8 C.F.R. § 244.1(*supra*).

Although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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 cited 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.