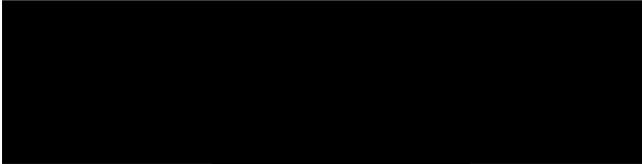




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 04 2007

[WAC 05 225 80731]

IN RE:

Applicant:



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 California Service Center. Any further inquiry must be made to that office.

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 on appeal. The appeal will be dismissed.

The applicant is 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 Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 189 67259 during the initial registration period. The Director, Texas Service Center (TSC), denied that application on September 17, 2003, after determining that the applicant had abandoned his application by failing to provide evidence regarding his arrest for the possession of a controlled substance.

The applicant filed the current Form I-821, on May 13, 2005, and indicated that he was re-registering for TPS.

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.

On October 17, 2003, counsel submitted a motion to reopen arguing that the applicant had not received the TSC Director's April 20, 2003 Notice of Intent to Deny requesting evidence regarding an arrest for the possession of a controlled substance and requesting additional time for the applicant to comply with the director's request. On August 15, 2005, the TSC Director requested that the applicant submit a final court disposition for the applicant's arrest on July 8, 2001 for possession of a controlled substance. The applicant furnished the required information on September 21, 2005.

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 that on September 21, 2001, the applicant was convicted of the unlawful possession of cocaine, a felony, by a Judge of the Criminal District Court #3 of Dallas County, Texas.

The applicant is ineligible for TPS due to a felony conviction and for being convicted of a crime relating to a controlled substance. Sections 244(c)(2)(B)(i) and 212(a)(2)(A)(i)(II) of the Act, and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application is affirmed for these additional 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 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.