

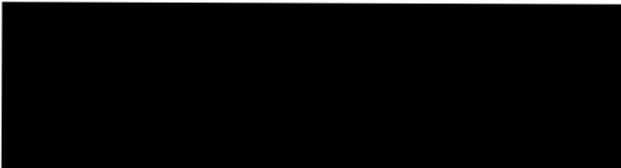
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U.S. Citizenship  
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 14 2006**

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 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 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 record reveals that the applicant filed a TPS application during the initial registration period on September 28, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 02 029 60961. The Director, Texas Service Center (TSC), denied that application on August 18, 2004, because the applicant had been convicted of two misdemeanors on October 9, 2002; namely, (1) "DUI OR UBA" and (2) driving with license suspended/canceled/revoked. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 18, 2005, 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 to apply for re-registration for TPS.

On appeal, counsel asserts that CIS erred in denying the applicant's TPS. He further asserts that the applicant never received notice that his initial TPS was withdrawn, he did not have the opportunity to appeal that decision, and still does not know the reasons for withdrawal since he believed that he had complied with the request for additional evidence.

It is noted that the applicant's initial TPS application was not withdrawn as stated by counsel, but, rather, it was denied. A review of the record indicates that a Notice of Intent to Deny (NOID) dated May 17, 2004, was issued by the Director, TSC, requesting that the applicant submit certified court dispositions of his arrests. The NOID was mailed to the applicant's address at that time. The applicant responded on June 1, 2004, by providing court documents of his arrests. Based on the court dispositions furnished, the Director, TSC, denied the application on August 18, 2004, based on his convictions of two misdemeanor offenses. The director's notice of decision to deny was also mailed to the applicant's most recent address at that time. There is no evidence in the record that the applicant had advised CIS of a change of address, nor is there evidence that the notice was returned to CIS as undeliverable.

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.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on February 18, 2005.

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). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The record indicates the following arrests and/or convictions relating to the applicant:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report reveals that on November 26, 1993, in Lake Worth, Florida, the applicant was arrested for Count 1, hit and run (leaving the scene of an accident); and Count 2, driving under the influence. The applicant subsequently furnished the Criminal History Report from the County/Circuit Court, Palm Beach County, Florida, Case No. 93039051TC, indicating that on January 4, 1994, a *nolle pros* was entered as to Count 1. On January 24, 1994, the applicant entered a plea of *nolo contendere* as to Count 2, and he was fined \$22.

- (2) On October 9, 2002, in the County/Circuit Court, Palm Beach County, Florida, Case No. 96026931TC (arrest date July 25, 1996), the applicant was convicted of Count 1, driving under the influence; and Count 2, driving while license suspended/cancelled/revoked. He was placed on probation for a period of 12 months, and ordered to pay \$876 in fines and costs.
- (3) The record of the County/Circuit Court, Palm Beach County, Florida (Case No. 02005452TC), indicates that on April 23, 2002, a *nolle pros* was entered as to the applicant's indictment for "no/improper driver license/exp more than 4 mos."

The applicant was convicted of three misdemeanors, detailed in Nos. 1 and 2 above, and his convictions continue to preclude a favorable finding of eligibility for TPS. Therefore, the application also must be denied for this reason.

It is further noted that the record of proceeding contains an outstanding Warrant of Deportation, Form I-205, issued on March 5, 1993, and that the applicant failed to appear at the Miami district office on September 5, 1996, for his enforced departure.

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.