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U.S. Citizenship
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FILE: [REDACTED]
[WAC 05 125 79760]

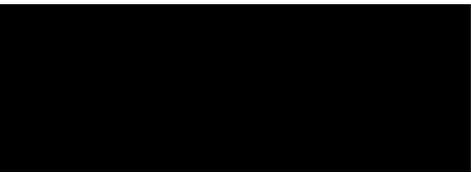
Office: CALIFORNIA SERVICE CENTER

Date: **FEB 10 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:



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
Robert P. Wiemann, Director
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 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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number [WAC 02 169 54011]. The director denied that application on or about February 22, 2003,¹ because the applicant failed to establish his qualifying continuous residence and failed to submit police clearances as requested.

The applicant filed a subsequent TPS application under CIS receipt number [WAC 02 236 54975], and indicated that he was re-registering for TPS. The director denied that application on October 21, 2003, because the applicant had not been granted Temporary Protected Status, under section 244 of the Immigration and Nationality Act prior to his filing a re-registration Form I-821, Application for Temporary Protected Status.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 2, 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 on or about February 22, 2003, and therefore, the applicant was not eligible to apply for re-registration for TPS.

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 decisions to deny the application will be affirmed.

Beyond the decision of the director, the applicant has failed to submit court dispositions for all of his criminal arrests, and it appears that he may also be ineligible for TPS due to his being convicted of two or more misdemeanors and/or a felony.

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:"

¹ The record of proceeding interchangeably alludes to the decision date in receipt number [WAC 02 169 54011] as being February 22, 2003 and February 24, 2003.

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.
8 C.F.R. § 244.1.

The record of proceeding reveals the following offenses in California:

- (1) On September 25, 2000, the applicant pled guilty to one count of spousal abuse and received a misdemeanor sentence, stemming from his arrest in Huron, California, on or about November 18, 1998;
- (2) On September 14, 2000, the applicant was arrested by the Fresno Sheriff's Office and charged with one count of infliction of corporal injuries on "spouse/cohab" which he later pled guilty to;
- (3) On September 12, 2000, the applicant pled guilty to one count of driving under the influence of alcohol or drugs, one count of unlicensed driver, and one count of not having proof of vehicle insurance stemming from his arrest in Salinas, California, on or about September 9, 2000; and,
- (4) On or about September 9, 2000, the applicant was apprehended by the Salinas Sheriff's Office and charged with one count of infliction of corporal injuries on "spouse/cohab."

For these additional reasons, the TPS application will be denied.

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.