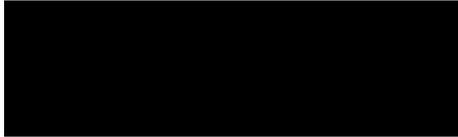




U.S. Citizenship  
and Immigration  
Services

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**JUL 18 2006**

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 154 72937]

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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 289 54122. The record confirmed that the applicant pled guilty in the Superior Court of California, County of Riverside, to the following charges: driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor; and, driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Date of Arrest: June 10, 2002; Case Number SWM005514). The director denied that application on March 18, 2004, because he found the applicant had been convicted of three misdemeanors. The Director (now Chief) of the AAO subsequently rejected the applicant's appeal from the denial decision as untimely filed on May 5, 2005.

It is noted that, the applicant, on appeal, provided a court disposition document indicating that he pled guilty on December 13, 2002, in the Superior Court of California, County of Riverside, to one count of possession of a narcotic controlled substance in violation of section 11350(a) H&S, a felony. The court accepted the applicant's plea and placed the applicant in a diversion program. He was referred to [REDACTED] Addiction Counseling & Education Diversion Program and ordered to complete that program and to pay a diversion restitution fee of \$100.00 and an administrative fee of \$100.00. (Date of Arrest: November 17, 2002; Case Number SWF002247).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 3, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on June 30, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (1) Registers for Temporary Protected Status 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.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on March 3, 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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). The applicant is also ineligible for TPS because of his record of three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for these reasons.

It is noted that the applicant, on appeal from the denial of the current re-registration application, states that he was only convicted of "a traffic offense."

The applicant's assertion that his three misdemeanor convictions arose in a single occasion and, therefore, he was convicted of a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with three separate counts and he pled guilty to three separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of three separate and distinct offenses.

The applicant further states that he was placed in a diversion program after pleading guilty to possession of a narcotic controlled substance, and that he successfully completed his diversion program. The applicant submits a court document from the Superior Court of California, County of Riverside, indicating that he completed the drug diversion program and the charge was ordered dismissed on June 16, 2004.

Since the applicant has provided proof that he successfully completed his diversion program and the charge was dismissed, the applicant's guilty plea to the felony charge of possession of a narcotic controlled substance does not count as a conviction for immigration purposes. However, the fact remains that the applicant is ineligible for TPS due to his record of three misdemeanor convictions.

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.