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**JUL 20 2006**

FILE: [REDACTED]  
[WAC 05 218 73421]

Office: CALIFORNIA SERVICE CENTER

Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 02 041 50681. The applicant's 1998 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in San Francisco, California, on September 13, 1996, and charged with "OBST RESIST EXEC PO," a felony, and three counts of "FALSE REPORT OF EMERGENCY," all misdemeanors. On June 20, 2002, the applicant was requested to provide the final court disposition of this arrest. In response, the applicant submitted a San Francisco Police Department Criminal History Record revealing the final court disposition of his 1996 arrest. Although this document is **not a final court disposition document**, it does reveal that the applicant pled guilty to the amended charge of disturbing the peace in violation of section 415 PC, a misdemeanor. The police department criminal history also revealed that the applicant was arrested on December 25, 1999, and charged with inflicting corporal injury on a spouse of cohabitant in violation of section 274.5 PC, a felony. The document indicates that the applicant was convicted on May 12, 2000, on one count of the amended charge of battery in violation of section 242 PC, a misdemeanor.

The director denied that application on February 28, 2003, because he found that the applicant failed to provide the final court dispositions of his arrest. On April 23, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that he did respond to the request for additional evidence. The director rejected the appeal as untimely filed on June 7, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 6, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on June 27, 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 May 6, 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). Therefore, the application also must be denied for this reason.

On appeal from the re-registration denial, the applicant has provided the following court documents:

1. a photocopy of a court document from the Municipal Court of the City and County of San Francisco, State of California, indicating that the applicant was convicted on one count of disturbing the peace in violation of section 415 PC. This document relates to the applicant's arrest on September 13, 1996.
2. a photocopy of a charging document relating to the applicant's arrest on September 13, 1996.
3. a photocopy of a document from the Superior Court of California, County of San Francisco, indicating that the applicant was convicted in that court on May 12, 2000, on one count of battery in violation of section 242 PC, a misdemeanor. This document relates to the applicant's arrest on December 25, 1999.
4. a charging document relating to the applicant's arrest on December 25, 1999;
5. a document from the Superior Court of California, County of San Francisco, indicating that the applicant was convicted on one count of driving with a suspended and revoked driver's license in violation of section 14601.1.2(a), a misdemeanor.
6. a charging document relating the conviction detailed in No. 5 above, indicating that the applicant was arrested on September 20, 2003, and charged with driving with a suspended and revoked driver's license in violation of section 14601.2(a) VC after two previous convictions on the charge of driving under the influence of alcohol.

The record confirms that the applicant is ineligible for TPS due to his record of at least three misdemeanor offenses, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

It is noted that the applicant's 2006 FBI fingerprint results report reveals the following additional offenses:

1. The applicant was arrested on February 3, 2002, and charged with: 1) driving under the influence of alcohol; 2) driving under the influence of alcohol with a blood alcohol content of 0.08% or greater; 3) "PROCEEDINGS, PRISONER PROD."
2. On June 12, 2003, the applicant was arrested in San Rafael, California, and charged with one count of 'COURT REMAND, DRIV, SUS/ETC LIC, DUI, VIO.'

These offenses must be addressed in any further proceeding before CIS.

It is further noted that the applicant filed a Form I-589, Application for Asylum and For Withholding of Removal, on July 24, 1998. On August 10, 2000, the application was denied and the applicant was referred for a removal hearing before an Immigration Judge. On the same day, August 10, 2000, a Form I-862, Notice to Appear, was issued by the District Director, Chicago, Illinois, ordering the applicant to appear for a removal hearing before an Immigration Judge in Council Bluffs, Iowa, on February 20, 2001. The record indicates that the removal hearing

was not held because the Immigration and Naturalization Service (now CIS) was not able to serve the notice to appear on the applicant.

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.