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FILE: [REDACTED]
[WAC 05 208 71981]

Office: CALIFORNIA SERVICE CENTER

Date: **JUL 20 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, 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 01 190 51496. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. The applicant was arrested in Los Angeles, California, on November 26, 1999, and charged with inflicting corporal injury on a spouse or co-habitant.
2. The applicant was arrested in Los Angeles, California, on April 12, 2002, and charged with one count of driving under the influence of alcohol.

On December 16, 2003, the applicant was requested to provide the final court dispositions of these arrests. The request for additional evidence was mailed to the applicant's address of record, but the applicant failed to respond to the notice. The director denied the application on April 12, 2004, due to abandonment because the applicant failed to respond to the request for additional evidence.

On May 5, 2004, the applicant filed a motion to reopen the case. On motion, the applicant claimed that he never received the request for additional evidence. In support of the motion, the applicant submitted additional documentation relating to his residence and physical presence in the United States; however, the applicant did not provide the final court dispositions of the arrests detailed in Nos. 1 and 2 above.

The director dismissed the motion on May 21, 2004, finding that it did not meet the requirements for a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on July 1, 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 April 26, 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 decision, the applicant provided the following final court disposition documents:

3. On April 15, 2002, the applicant pled nolo contendere and was convicted in the Superior Court of California, County of Los Angeles, on one count of 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. This document relates to the arrest detailed in No. 2 above.
4. On January 12, 2004, the applicant was convicted in the Superior Court of California, County of Los Angeles, on one count of driving with a suspended license in violation of section 14601.1(a) VC, a misdemeanor. This arrest is not reflected in the applicant's FBI fingerprint results report.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in Nos. 3 and 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Additionally, the applicant has failed to provide the final court disposition of the offense detailed in No. 1 above. Therefore, he is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). The application also must be denied for these reasons.

It is noted that the applicant filed a Form I-589, Application for Asylum and For Withholding of Removal, on September 20, 1996. On March 20, 1997, the application was denied and the applicant was referred for a removal hearing before an Immigration Judge. In hearing before an Immigration Judge in Los Angeles, California, on June 22, 1998, the applicant withdrew his application for suspension of deportation. The Immigration Judge granted the applicant the privilege of voluntary departure from the United States on or before October 20, 1998, with an alternate order of removal if the applicant failed to depart in compliance with the grant of voluntary departure. The applicant failed to comply with the grant of voluntary departure. The record contains an outstanding warrant of removal issued by the District Director, Los Angeles, California, on November 18, 1998.

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.