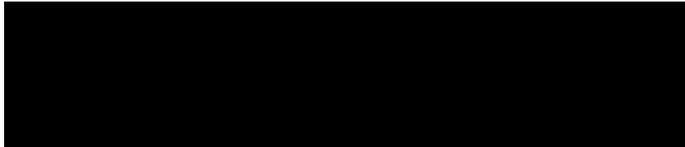


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U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 218 70410]

IN RE: Applicant:

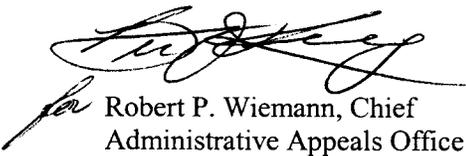


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 (AAO) 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 under Citizenship and Immigration Services (CIS) receipt number WAC 01 180 55442. The director denied that application based on abandonment on June 15, 2004, because the applicant had failed to respond to a request to submit the final court dispositions of all of his arrests. The applicant appealed the director's decision to the AAO on July 2, 2004. He submitted copies of letters from the Superior Court of the San Fernando Branch and from the Superior Court of the County of Los Angeles, and the California Department of Motor Vehicles (DMV) Form K-4 report reflecting no arrest record regarding the applicant. The AAO reviewed the record of proceeding and noted that the applicant did respond to the director's request for additional evidence and was received at the California Service Center prior to the director's decision. The AAO, therefore, withdrew the director's finding that the applicant abandoned his application, and a decision was made based on the evidence of record. The AAO subsequently dismissed the appeal on August 1, 2005, after determining that the applicant had not provided the final court dispositions of his arrests, and that the record indicated that the applicant was arrested under the name of [REDACTED] and that the letters from the courts and the DMV report did not show that a search of their records was made under this name.

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.

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.

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 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 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. 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 in California relating to the applicant:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on December 22, 2001, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for driving under the influence of alcohol/drugs. On appeal, the applicant submits the records of the Superior Court of California, County of Los Angeles, indicating that the applicant was indicted on January 7, 2002, under Case No. [REDACTED] (arrest date December 22, 2001), of Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor, and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. The record shows that the applicant was not present in court for his arraignment on January 16, 2002, and a bench warrant for his arrest was issued. On June 14, 2005, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 48 hours in the county jail, ordered to pay \$1,383 in fines and costs, enroll and successfully complete a 3-month first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Counts 1 and 3 were dismissed.
- (2) The FBI report indicates that on May 22, 1997, in Los Angeles, California, the applicant was arrested for "appropriate lost money." On appeal, the applicant submits a second letter from the Superior Court of California, County of Los Angeles, located in Van Nuys, California, dated September 2, 2005, indicating that no record was found for an arrest dated May 22, 1997, under the names [REDACTED]

It is noted that the FBI report (No. 2 above) shows that the applicant was released based on lack of sufficient evidence. The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

As noted above, there is no evidence to establish that the information on the FBI report regarding the applicant's arrest on May 22, 1997, and his subsequent release, was accurate. While the letter from the Superior Court of California, County of Los Angeles, located in Van Nuys, California, indicated that no record was found for arrest date May 22, 1997, under the applicant's name, including his three aliases, there is no evidence that the arrest information, such as the place of arrest and offense, including the applicant's date of birth, fingerprints, and other pertinent information, were used for the search. Furthermore, there is no evidence that the applicant's case was heard at that court. If the applicant was, in fact, released based on lack of prosecution, such record should have been filed with the appropriate court and/or state or district attorney. It may be assumed that the applicant would have known where he was arrested and where his case was heard.

- (3) Based on the applicant's re-registration application, he was re-fingerprinted on February 4, 2006. The FBI fingerprint results report indicates that on June 12, 2005, in Los Angeles, California, the applicant, under the name [REDACTED] was arrested for Count 1, inflicting corporal injury to a spouse/cohabitant; and Count 2, driving under the influence of alcohol/drugs. The final court disposition of this arrest is not contained in the record of proceeding.

The applicant has been afforded a reasonable time to correct or complete the information, or to provide the final court disposition, of his arrest listed on the FBI report (No. 2 above), and also his arrest detailed in No. 3 above. Therefore, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application will also be affirmed.

The record contains a Warrant of Deportation, Form I-205, issued in Los Angeles, California, on April 11, 1996, based on the final order of removal by an immigration judge on February 20, 1996. The applicant failed to appear at the Los Angeles district office on May 7, 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.