



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

MI



FILE: [REDACTED]
[WAC 05 123 75513]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 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: 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 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 52264. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On June 28, 1992, the applicant was arrested in Los Angeles, California, and charged with spouse beating.
2. On January 1, 2003, the applicant was arrested in Los Angeles, California, and charged with one count of driving under the influence of alcohol.

On August 5, 2004, the applicant was requested to submit evidence to establish his identity and nationality, additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and the final court dispositions of the arrests detailed in Nos. 1 and 2 above. The applicant, in response, submitted evidence to establish his identity and nationality, additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and the final court disposition of the arrest detailed in No. 1 above. According to the court document, the applicant was convicted on June 30, 1992, in the Municipal Court of Los Angeles, Central Arraignment District, County of Los Angeles, State of California, on the charge of inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor. However, the applicant failed to provide the final court disposition of the offense detailed in No. 2 above. The director denied the application on April 8, 2005, because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 31, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on August 15, 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 January 31 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). It is noted that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his wife, [REDACTED] a naturalized United States citizen. However, the applicant cannot qualify for late initial registration based on an approved immigrant visa petition. Therefore, the application also must be denied for this reason.

On appeal from the current re-registration denial, the applicant has provided the final court dispositions of two offenses, the arrest detailed in No. 2 above and another arrest not previously listed on the applicant's FBI fingerprint results reports. The court document relating to the arrest detailed in No. 2 above reveals that the applicant was convicted on February 21, 2003, 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. (Case No. [REDACTED]) The other court document revealed that the applicant was convicted in the Municipal Court of Metropolitan Courthouse Judicial District, County of Los Angeles, State of California, on April 30, 1997, on the charge of reckless driving in violation of section 23103 VC, a misdemeanor. (Date of Arrest: April 8, 1997; Case No. [REDACTED])

The record confirms that the applicant has been convicted of three misdemeanors. Therefore, the applicant is also ineligible for TPS based on his criminal record. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The application also must be denied for this reason.

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.