



U.S. Citizenship
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FILE: [REDACTED]
[WAC 05 224 76694]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 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, Director
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 02 146 51911. The applicant stated on his TPS application that he was arrested on July 27, 1994, and charged with disorderly conduct – postitition, but the charge was dismissed. He further stated that he was arrested on December 20, 1995, and charged with inflicting corporal injury on a spouse or cohabitant, but the charge was discharged by the District Attorney. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On August 17, 1992, the applicant was arrested in Salinas, California, and charged with taking a vehicle without the owner's consent.
2. On December 21, 1995, the applicant was arrested in Monterey, California, and charged with inflicting corporal injury on a spouse or cohabitant.

It is noted that the 1996 arrest on the charge of disorderly conduct: prostitution was not reflected on the fingerprint results report. On February 20, 2003, the applicant was requested to provide the final court dispositions for the offenses detailed in No. 1 and the arrest on the charge of disorderly conduct: prostitution. The applicant, in response, provided a document from the Superior Court of California, County of San Francisco, indicating that the charge of inflicting corporal injury on a spouse or cohabitant in violation of section 273.5 PC, a misdemeanor, was dismissed by the District Attorney's office on December 22, 1995, for lack of evidence. (Court Number [REDACTED]) This document relates to the offense detailed in No. 2 above. The applicant also submitted a court document from the Superior Court of California, County of San Francisco, indicating that the charge of soliciting or agreeing to engage in prostitution in violation of section 746(b) PC, a misdemeanor, was dismissed by the District Attorney's Office on June 7, 1996, for lack of evidence. [REDACTED] This document relates to the June 27, 1994, arrest listed by the applicant on his TPS application. Finally, the applicant provided a document from the Superior Court of California, County of Monterey, indicating that the court record relating to the applicant's arrest on the charge of taking a vehicle without the owner's consent in violation of section 10851 VC, a misdemeanor, had been destroyed and purged pursuant to section [REDACTED] of the Government Code. [REDACTED] This document relates to No. 1 above.

The applicant's 2004 fingerprint results report revealed the following additional arrest:

- (3) On November 17, 2003, the applicant was arrested in Redwood City, California, and charged with one count of possession of a narcotic controlled substance and one count of driving under the influence of alcohol or drugs.

On October 12, 2004, the applicant was requested to provide the final court disposition of this 2003 arrest. The applicant, in response, provided a court document from the Superior Court of California, Northern Branch,

relating to a felony arraignment hearing. This document indicates the applicant was charged with: (1) one count of possession of a narcotic controlled substance in violation of section 11350(a) H&S; (2) one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; and, (3) 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 Number [REDACTED]) The applicant did not, however, provide a court document revealing the final court disposition of this offense.

The director denied the application on November 30, 2004, because he found the applicant failed to submit requested court documentation relating to his criminal record. The applicant filed an appeal from the denial decision on January 3, 2005. On appeal from the denial decision, the applicant provided a document from the Superior Court of California, County of San Mateo, indicating that the complaint was amended in the Superior Court of California, County of San Mateo, to include count (4), one count of reckless driving in violation of section 23103.5(a) VC, a misdemeanor. The applicant pled nolo contendere to count (4) and was convicted. Counts (2) and (3) were dismissed due to plea negotiation. As to Count 1, possession of a narcotic controlled substance, the applicant was diverted from prosecution for two years and criminal proceedings were suspended.

On March 30, 2005, the director rejected the applicant's appeal from the denial decision as untimely filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on June 28 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 12, 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/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 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.

The document from the Superior Court of California, County of Monterey, indicating that the applicant's criminal record relating to the charge detailed in No. 1 above has been destroyed is not acceptable because it is not a court disposition document. The fact that the applicant's record relating to the charge detailed in No. 1 above has been destroyed does not mean the applicant was not convicted. Further, when a record is purged that does not mean that the charge was dismissed or that a conviction was vacated on its merits. The burden is on the applicant to provide affirmative evidence that the charge has been dismissed. As of this date, the applicant has failed to submit the final court disposition for the offense detailed in No. 1 above.

The applicant has provided a court document establishing that he has been convicted of one misdemeanor, reckless driving in violation of section 23103.5(a) VC. The applicant was placed on probation for a period of two years and ordered to pay a fine of \$884.

As to Count 1, possession of a narcotic controlled substance in violation of section 11350(a) H&S, the court granted the applicant a deferred entry of judgment for a period of two years. He was ordered to enter a first offender drug program on or before September 3, 2004, complete such program on or before April 12, 2005, and provide proof of completion to the court on or before that same date, April 12, 2005. On October 27, 2004, the applicant admitted in court to violation of probation and was ordered to serve one day in the county jail and to enroll in a first offender program on or before November 17, 2004, complete such program on or before April 27, 2005, and to provide proof of completion to the court on or before the same date, April 27, 2005. The latest entry in the court record, November 16, 2004, indicates that the applicant provided proof of enrollment in the first offender program and was ordered to report to the county jail on December 11, 2004 to be assigned to the Sheriff's work program. The applicant, to date, has not provided any proof to establish that he complied with the terms of his probation, completed the first offender program, and provided proof of completion to the court by the required date, or that the charge was subsequently dismissed because the applicant complied with the conditions of his probation.

The applicant has not provided the final court disposition of the charge of taking a vehicle without the owner's consent, and he has also failed to provide proof to establish that the charge of possession of a narcotic controlled substance was subsequently dismissed because he complied with all the terms of his probation. In view of the foregoing, it is concluded that the applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, 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.