

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



*M*

**JAN 03 2007**

FILE:



[WAC 05 218 76683]

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:



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 "R. 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 01 280 58686. The record revealed the following offenses:

1. On December 10, 1998, the applicant was convicted in the Superior Court of California, County of Sonoma, of 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. (Date of Arrest: November 19, 1998; Case Number [REDACTED])
2. On July 19, 1999, the applicant was convicted in the Superior Court of California, County of Sonoma, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater with one prior conviction on the same charge in violation of section 23152(b) VC, a misdemeanor. (Date of Arrest: June 27, 1999; Case No. [REDACTED])
3. On April 10, 2000, the applicant was convicted in the Superior Court of California, County of Sonoma, on one count of evading a police officer in violation of section 2800.1(a) VC, a misdemeanor. (Date of Arrest: March 20, 2000; Case No. [REDACTED])
4. On June 27, 2002, the applicant was convicted in the Superior Court of California, County of Sonoma, of one count of drunk and disorderly in public in violation of section 647(f) PC, a misdemeanor. (Date of Arrest: September 29, 2001; Case No. [REDACTED])

The director denied the application on March 27, 2003, because he found the applicant had been convicted of a felony or two or more misdemeanors. The applicant did not file an appeal from the denial decision.

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 September 26, 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, counsel states that the sentencing provision section 19 of the California's penal code is divisible in that a court may impose only jail time, or only a fine, or it may impose both. Counsel contends that only those misdemeanor convictions resulting in imposition of imprisonment constitute "misdemeanors" under 8 C.F.R. § 244.1. Therefore, counsel contends, the applicant's misdemeanor convictions detailed in Nos. 2, 3, and 4 above do not constitute "misdemeanors" for TPS purposes.

Counsel's contention cannot be accepted. The term "misdemeanor" is defined at 8 C.F.R. § 244.1 as "a crime committed in the United States punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. . . For purposes of this definition, any crime punishable by imprisonment for a maximum of five days or less shall not be considered a misdemeanor." Each of the misdemeanor offenses of which the applicant was convicted is punishable by imprisonment for a term of at least five days, but no more than one year. Counsel has apparently chosen to ignore the plain meaning of the definition of "misdemeanor" at 8 C.F.R. § 244.1, "a crime committed in the United States that is punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any.**" (Emphasis added.). The applicant has been convicted of four misdemeanors in the United States, regardless of the time the applicant actually served. Therefore, the applicant is ineligible for TPS due to his record of four misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), and the application also must be denied this reason.

It is noted that the applicant was apprehended by Immigration and Customs Enforcement (ICE) on November 6, 2003, while working at [REDACTED] in Windsor, California, and placed in removal proceedings. On September 16, 2004, the applicant filed a Form I-589, Application for Asylum and For Withholding of Removal. In a removal hearing before an Immigration Judge on March 31, 2005, the applicant withdrew his applications for asylum and for withholding of removal. The Immigration Judge granted the applicant the privilege of voluntary departure on or before May 31, 2005, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure. On April 11, 2005, the applicant filed an appeal from the Immigration Judge's order with the Board of Immigration Appeals (BIA). The applicant's appeal is still pending before the BIA.

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.