



U.S. Citizenship  
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FILE:



[WAC 05 223 89290]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 17 2007

IN RE:

Applicant:



APPLICATION:

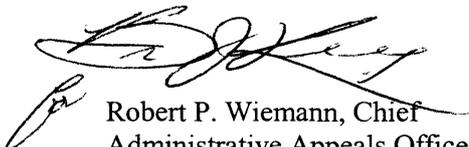
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
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 claims to be 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 on May 14, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 225 55732. The director originally denied that application on September 25, 2003, because the applicant had been convicted of two or more misdemeanors. On April 13, 2004, the applicant's case was reopened. On June 14, 2004, the director again denied the application based on the applicant's convictions of two or more misdemeanors. On August 25, 2004, the applicant filed an appeal from the denial decision. The AAO reviewed the record and the evidence furnished, and determined that the applicant was convicted of two misdemeanors on June 19, 2002, in San Jose, California, for violation of sections 23152(b) VC and 12500(a) VC; that the applicant's claim that he was convicted of only one misdemeanor because his two misdemeanor convictions arose in a single occasion, cannot be accepted; and that the applicant remains convicted of the two misdemeanors despite the expungement of his convictions. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Therefore, the AAO dismissed the appeal on November 17, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on February 3, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that the director's decision dated February 3, 2006, is incorrect because he had filed an appeal from the director's decision [denial decision dated June 14, 2004, and appeal received on August 25, 2004] and that the appeal remains pending. He submits additional evidence.

As addressed above, the record indicates that the director initially denied the application on September 25, 2003, the case was reopened on April 13, 2004, the director again denied the application on June 14, 2004, the applicant filed an appeal on August 24, 2004, and the AAO dismissed the appeal on November 17, 2005. Accordingly, the applicant's appeal of the initial decision was no longer pending.

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 11, 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). Therefore, the application also must be denied for this reason.

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, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant was convicted of two misdemeanors as determined by the director and by the AAO on November 17, 2005 [namely, (1) driving under the influence of alcohol with a blood alcohol content of 0.08% or greater, 23152(b) VC, and (2) driving without a valid driver's license, 12500(a) VC, under Case No. [REDACTED] name used: [REDACTED], and that his convictions continue to preclude a favorable finding of eligibility for TPS. Additionally, the applicant, on appeal, submits an order of the Superior Court of California, County of Santa Clara, dated February 3, 2004, setting aside the applicant's conviction of PC 647(f) [public intoxication: drugs/alcohol, a misdemeanor, on June 18, 2002, under Case No. [REDACTED] pursuant to § 1203.4 PC. This conviction has not previously been

addressed; however, as determined by the AAO, and as held in *Matter of Roldan, supra*, the applicant remains convicted of this offense despite the expungement of the conviction.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). It is noted that the AAO had addressed in its decision dated November 17, 2005, that the applicant had not submitted a national photo identification to establish his identity. Therefore, the application will also be denied for this reason.

The Federal Bureau of Identification fingerprint results report indicates that the applicant was encountered by the United States Border Patrol on May 8, 1995, near Laredo, Texas, and was subsequently placed in removal proceedings (file number [REDACTED]).

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.