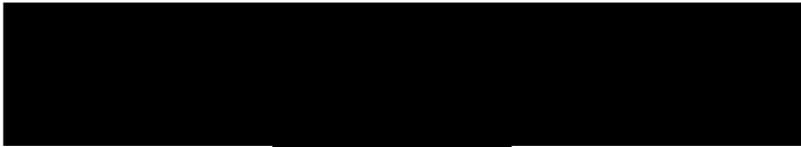




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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JAN 17 2007

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 222 76734]

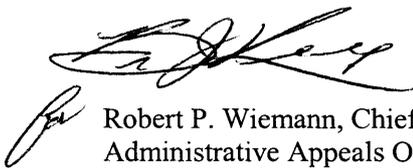
IN RE: Applicant: [REDACTED]

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 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 an initial TPS application on September 11, 2003, under Citizenship and Immigration Services (CIS) receipt number WAC 03 261 53934. The director denied that application on March 26, 2004, because the applicant had failed to submit the final court dispositions of his arrests on July 28, 2002, and on July 13, 2003. The applicant appealed the director's decision to the AAO on April 29, 2004. The AAO rejected the appeal on February 9, 2005, because the appeal was untimely filed. The AAO noted that although the applicant responded to the director's notice of March 19, 2004, he did not provide certified copies of the final court dispositions of his arrests as requested.

It is noted that the director failed to address in his initial decision that the applicant filed his initial TPS application on September 11, 2003 (noted above), after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. While the record shows that the applicant was included in his father's asylum application, [REDACTED] file [REDACTED] as his dependent on September 24, 1998, [REDACTED] withdrew the asylum application on December 16, 2002, when he was granted NACARA (Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100)). The applicant, however, was no longer a "child," as defined in section 101(b)(1) of the Act, when the asylum application was withdrawn. The applicant turned 21 years of age on June 9, 2000, prior to the initial registration period for El Salvadorans. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed below).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 10, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on July 1, 2005, 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 requests that his case not be closed because he did submit all the documents requested by CIS. He asserts that he is eligible for TPS since he has been physically present in the United States since July 15, 1998.

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 indicates that the applicant filed the current application with CIS on May 10, 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The Federal Bureau of Investigation (FBI) fingerprint results report indicates the following:

- (1) On July 28, 2002, in Las Vegas, Nevada, the applicant was arrested for battery.
- (2) On July 13, 2003, in Las Vegas, Nevada, the applicant was arrested for Count 1, reckless driving; Count 2, failure to yield to emergency vehicle; Count 3, driving under the influence of alcohol; and Count 4, open container in a vehicle (alcohol).

In a notice of intent to deny dated March 4, 2004, the director requested that the applicant submit certified copies of the final court dispositions of his arrests listed above. In response, the applicant submitted:

- (3) A notice from the Municipal Court of the City of North Las Vegas, Nevada, ordering the applicant to appear in court on April 9, 2003, regarding: "Offense: BATT/DOM," under Case No. [REDACTED]. Also submitted is a copy of a certificate issued to the applicant on April 8, 2003, for having successfully completed the 26-week "Domestic Violence" counseling program. The applicant did not submit the charging documents and final court disposition of this offense.
- (4) A copy of a "Completion Report" from North Las Vegas Municipal Court indicating that the applicant has completed all of the court ordered requirements and that the following case was considered closed: "Case # [REDACTED]; Date 1-22-04." The applicant did not submit the charging documents and final court disposition of this offense.

The applicant has failed to provide the final court dispositions of his arrests/charges, detailed in Nos. 1, 2, 3, and 4 above. 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). 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.