

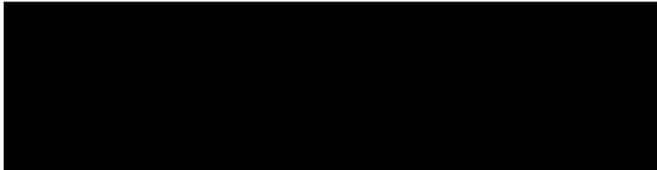
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

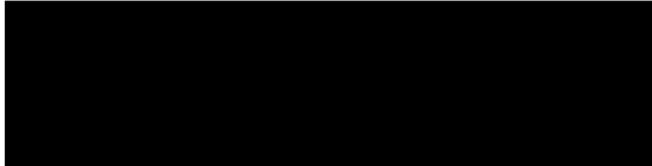
**JUL 30 2007**

[WAC 05 208 74744]

[SRC 01 148 59541]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

A small handwritten mark or signature.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office 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 March 26, 2001, under receipt number SRC 01 148 59541. The CSC director denied that application on June 27, 2006,<sup>1</sup> because the applicant had been convicted of two or more misdemeanors.

During the interim of the pending initial TPS application (SRC 01 148 59541), the applicant filed the current Form I-821, Application for Temporary Protected Status (WAC 05 208 74744), on April 26, 2005, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application also on June 27, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. It appears that the director was referring to the denial of the applicant's first TPS application (SRC 01 148 59541).

A remand of this case to the director based on premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application, because the record as presently constituted establishes that the applicant was, indeed, convicted of two or more misdemeanor offenses as detailed below.

The applicant is filing the current TPS application as a re-registration; therefore, 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

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<sup>1</sup> The CSC director erroneously indicated that the initial TPS application was denied on May 30, 2006. The CSC director's decision denying the initial TPS application (SRC 01 148 59541) was date stamped June 27, 2006.

(2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following:

- (1) On April 7, 2004, in the County Court of the Ninth Judicial Circuit, Osceola County, Florida, Case No. 03TC006205 (arrest date December 22, 2003), the applicant was convicted of driving under the influence, FL 316.193, a misdemeanor. He was placed on probation for a period of one year, his driving privileges were revoked for a period of 6 months, ordered to pay \$565 in fines and costs, to complete 50 hours of community service, and incarcerated in the county jail for a period of 2 days with credit for time served.
- (2) The Federal Bureau of Investigation fingerprint results report indicates that on January 13, 2004, in Osceola County, Florida, the applicant was arrested for "written promise to appear," FL 901.31, a misdemeanor. The final disposition of this arrest is not contained on the record.
- (3) On July 22, 2004, in the County Court of the Ninth Judicial Circuit, Osceola County, Florida, Case No. 04TC002165 (arrest date April 26, 2004), the applicant was convicted of driving while license suspended or revoked, FL 322.34, a misdemeanor. He was ordered incarcerated in the county jail for a period of 31 days, placed on probation for a period of 6 months, and pay \$262.50 in fines and costs.

On appeal, the applicant asserts that he believes the director's decision is unjust because he went to court, he complied with the judge's order, and the case was closed. He further asserts that "there was just one case for the DUI and DWLS."

The fact that the applicant complied with the judge's order and that the case was closed (based on completion of probation) is not evidence that the applicant was not convicted of Nos. 1 and 3 above. Furthermore, according to the court dispositions, the applicant was charged with two separate offenses on two separate occasions under two separate case numbers, he pled guilty to two separate crimes, and the court issued two separate sentences. Therefore, the applicant had been convicted of two separate and distinct misdemeanor offenses.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the initial TPS application for this reason will also be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

The record of proceeding contains Form I-862, Notice to Appear, issued on August 8, 2006, in Laguna Niguel, California.

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.