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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 07 2007
[WAC 05 218 78319]

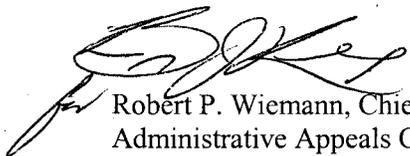
IN RE: Applicant: [REDACTED]

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 (AAO) 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 a TPS application during the initial registration period on April 30, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 199 53050. The director denied that application on February 27, 2004, because the applicant had been convicted of two misdemeanors. The applicant appealed the director's decision to the AAO on March 24, 2004. The AAO noted that the applicant was convicted of one misdemeanor and two infractions; however, the applicant still had not provided the final court dispositions of two offenses. The AAO, therefore, determined that the applicant had failed to provide information necessary for the adjudication of his application and dismissed the appeal on April 29, 2005.

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.

The director denied the re-registration application on January 24, 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 states that he believes CIS has made an error in denying his right to register and enjoy the benefits of the TPS program. He asserts that he has complied with all the requirements requested by CIS.

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 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 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 record indicates the following:

- (1) On January 31, 1997, in the Municipal Court of L.A., Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 19, 1996), the applicant was indicted for hit and run/property damage, 20002(a) VC, a misdemeanor. On May 16, 1997, the court ordered the complaint amended by interlineation to add violation of 16025(a) VC, proof of financial responsibility/accident scene, an infraction, as Count 2. The applicant was subsequently convicted of Count 2. He was ordered to serve 7 days in the county jail, credit for time served, and ordered to pay \$50 in fines and costs. All remaining counts were dismissed.
- (2) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on April 12, 1997, in Norwalk, California, the applicant was arrested for "H&R PRPTY DMAGE/LOCATE/ETC OWNER REQUUMTS," a misdemeanor. The final court disposition of this arrest is not contained in the record.
- (3) On May 11, 2000, in the superior Court of California, County of Los Angeles, Case No. [REDACTED] the applicant was indicted for Count 1, driving under the influence of alcohol/drug; 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. Also on May 11, 2000, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months,

ordered to spend 13 days in the county jail, pay \$1227.28 in fines and costs, enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Counts 1 and 3 were dismissed.

- (4) On June 16, 2003, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date May 24, 2003), the applicant was indicted for Count 1, driving under the influence of alcohol/drug; 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On June 18, 2003, the applicant was convicted of Count 2. He was placed on probation for a period of 60 months under the condition that he serve 96 hours in the county jail, ordered to pay \$1,544 in fines and costs, participate in an 18-month program of treatment or counseling, and driving was restricted for 18 months. Count 1 was dismissed.
- (5) The FBI report indicates that on June 27, 2003, the applicant was arrested or received by the Norwalk, California Sheriff's Office for driving with .08 percent blood alcohol level or higher. It appears that this incident relates to No. 4 above when the applicant surrendered on June 27, 2003, to begin serving his sentence.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 3 and 4 above, and because he failed to provide information necessary for the adjudication of his application, in that the applicant has failed to provide the requested final court disposition of his arrest detailed in No. 2 above. 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.

The record contains a Warrant of Deportation [Removal], Form I-205, issued in Los Angeles, California, on April 22, 1996, based on the final order of removal by an immigration judge on November 14, 1995.

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.