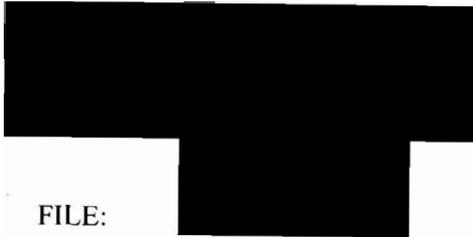


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FILE:

Office: California Service Center

Date: MAY 29 2007

[SRC 01 217 56624 & WAC 05 155 73858]

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 California Service Center. 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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

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 record reveals that the applicant filed an initial TPS application on May 11, 2001, under CIS receipt number SRC 01 217 56624. The Texas Service Center director approved that application on March 6, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 4, 2005, under CIS receipt number WAC 05 155 73858, and indicated that he was re-registering for TPS.

The California Service Center director simultaneously withdrew the applicant's TPS and denied the re-registration application, on August 11, 2006. The director noted that the applicant failed to submit evidence requested in an August 29, 2005, notice of intent to withdraw, for the final court dispositions of four arrests (detailed below). The director noted that the notice of intent to withdraw was mailed to the applicant's last known address and was not returned as undeliverable. The director, therefore, deemed the re-registration application abandoned. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The director, simultaneously, withdrew the applicant's temporary protected status as the applicant failed to comply with re-registration requirements for TPS.

On appeal, the applicant states that he did not submit the evidence requested pertaining to the arrests because, due to hurricane Katrina, he evacuated the South Louisiana area where he lived and did not return until about three months later. The applicant further states that due to the circumstances, he could not respond to the director's request to submit final court dispositions, and he is providing the court disposition for a DWI arrest. With his appeal, the applicant's counsel provides:-

- A disposition of an arrest for DWI. The court disposition indicates that, on October 18, 2005, the applicant was convicted, on a guilty plea, by the State of Mississippi Uniform Justice Court, of DUI 1st Offense, and was sentenced to two days jail, and fined \$753.50 fees and costs;
- A certificate of completion of a Driver Improvement / DWI Education Program, dated January 30, 2006;
- A letter from [REDACTED] stating that the applicant completed substance counseling on May 6, 2006; and,
- A certificate of completion, awarded on March 11th 2006, by [REDACTED] of a Hispanic Driver Improvement Substance Abuse DWI Education Program.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien

was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status,” or if, “the alien fails without good cause to re-register”.

As noted above, on August 29, 2005, the director notified the applicant of the intent to withdraw his temporary protected status because the record reflected that the applicant had been arrested for two or more misdemeanors. The applicant was granted 30 days to submit final court dispositions. As the applicant failed to submit the requested court dispositions, the director determined the applicant had failed to re-register for TPS and, simultaneously, withdrew the applicant's temporary protected status.

In this case, however, it does not appear that the applicant “willfully” failed to obtain the requested court records. The applicant was instructed to obtain court dispositions one month after Hurricane Katrina devastated New Orleans. Consequently, under these extraordinary circumstances, it is probable that the applicant could not obtain the requested documentation at that time. The applicant should be given the opportunity once again to obtain the requested court documentation. Therefore, the director's decision to withdraw the applicant's Temporary Protected Status, will, itself, be withdrawn.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects four additional arrests:-

- On March 6, 2001, the applicant was arrested by the Sheriff's Office, Gretna, Louisiana, and charged with Simple Battery;
- On July 5, 2003, the applicant was arrested by the Sheriff's Office, New Orleans, Louisiana, and charged with: Charge 1 – Operating a Vehicle While Intoxicated; Charge 2 – One Way roadways and Rotary Traffic Islands; Charge 3 – Careless Driving; and, Charge 4 – Driver Must Be Licensed.
- On August 17, 2003, the applicant was arrested by the Sheriff's Office, Gretna, Louisiana, and charged with: Charge 1 – Appearing In An Intoxicated Condition; Charge 2 – Resisting An Officer; and, Charge 3 – Self Mutilation by a Prisoner.
- On September 5, 2004, the applicant was arrested by the Sheriff's Office, Gretna, Louisiana, and charged with: Charge 1 – Simple battery; Charge 2 – Disturbing the Peace; Charge 3 – Resisting An Officer; and, Charge 4 – Battery of a Police Officer.

It is also noted that the final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests, and any court dispositions, in any future proceedings.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.