

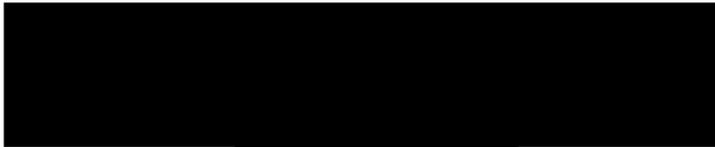
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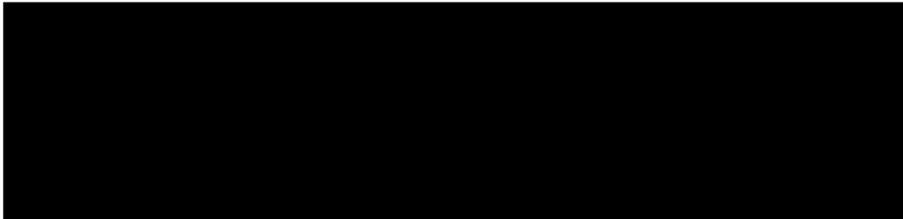


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JAN 29 2008**  
[EAC 01 194 50699]  
[WAC 05 210 81681]

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:



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 Director, Vermont service Center (VSC) denied the initial application. The Director, California Service Center (CSC) denied the re-registration application. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director, VSC, denied the initial application because of the applicant's failure to provide certified judgment and conviction documents from the courts addressing the applicant's arrests on June 15, 2003, and on July 31, 2004. The director, CSC, denied the applicant's subsequent re-registration application because the applicant had not previously been granted TPS.

On appeal, the applicant submits various documents relating to his physical presence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (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.

An alien shall not be eligible for TPS 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. See 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
- (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 reflects that the applicant filed his initial application on May 7, 2001, with the VSC (EAC 01 194 50699) – during the initial registration period for Salvadorans. The application listed an address in Plainfield, New Jersey.

On February 27, 2005, the applicant filed the current application for re-registration (WAC 05 210 81681). The application listed an address in Charlotte, North Carolina.

On October 18, 2005, the director, VSC, sent the applicant a Notice of Intent to Deny his initial application (EAC 01 194 50699). The director sent the Notice to the applicant’s attorney of record in Plainfield, New Jersey. The director informed the applicant that a criminal history check from the Federal Bureau of Investigations indicated that the applicant had been arrested on June 15, 2003, and on July 31 2004, by the North Carolina Police Department and charged with larceny and assault on a female. The director requested that the applicant provide a certified judgment and conviction document for every charge against him. The director also specified that if the applicant was convicted of any charge, that he provide evidence showing whether the charge was classified as a felony or misdemeanor. The record does not contain a response to the director’s request.

On January 12, 2006, the director, CSC, sent the applicant a Notice of Intent to Withdraw his TPS (WAC 05 210 81681). The director informed the applicant that records showed that he had been arrested for larceny on June 15, 2003, and for Assault on a Female, Child Abuse, and Interfering with an Emergency Communication, on July 31, 2004. The director requested that the applicant submit evidence of the final court dispositions of these and all other arrests. In response, the applicant submitted final court dispositions of the three charges from July 31, 2004, that showed that the charges had been dismissed. The applicant, however, did not submit the final court disposition of the arrest for larceny on June 15, 2003.

On July 27, 2006, the director, CSC, requested that the applicant submit evidence of his eligibility for TPS in conjunction with his re-registration application (WAC 05 210 81681). In response, the applicant submitted numerous documents relating his physical presence in the United States, including the birth certificate of his child, pay stubs, tax returns, bank statements, medical records, retirement plan summary, and an employment verification letter.

On August 14, 2006, the director, VSC, denied the applicant's initial application (EAC 01 194 50699) for failure to provide final dispositions for his arrests. That decision was mailed to the applicant's attorney in Plainfield, New Jersey.

On October 9, 2006, the director, CSC, denied the applicant's re-registration application (WAC 05 210 81681) because the applicant had not previously been granted TPS.

On appeal, the applicant submits numerous documents related to his physical presence but none relating to his arrest record.

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. Accordingly, the CSC director's decision to deny the application on this ground is affirmed.

The record contains a computerized Federal Bureau of Investigations (FBI) criminal history record showing that the applicant was found guilty of misdemeanor larceny, by the Gastonia County District Court, on August 20, 2003. However, because the applicant has not submitted the requested certified, final disposition from that Court, the AAO is unable to make a conclusive determination on the criminal elements of his case.

An alien applying for TPS has the burden of proving that he or she meets the requirements listed 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.