

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE:

[REDACTED]
[WAC 05 225 80171]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 19 2007

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.


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 a TPS application during the initial registration period on May 22, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 230 52256. The director denied that application based on abandonment on April 21, 2004, because the applicant had failed to respond to a request dated February 28, 2004, to submit the final court dispositions of his arrests. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 28, 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 he be granted TPS and employment authorization because he has to work in order to support his family in El Salvador. He submits a copy of Form I-797C, Notice of Action, issued by the California Service Center on June 28, 2005, and states that he has filed Form I-821, Application for Temporary Protected Status, and that he has never applied for employment authorization under Form I-589, Request for Asylum in the United States, nor has he ever applied for political asylum.

It is noted that the director incorrectly stated on Form I-797C that the applicant's Form I-765, Application for Employment Authorization, filed on May 17, 2005, was based on a pending Form I-589, but that no record was found to establish that the applicant has a pending application for asylum. As maintained by the applicant, he applied for employment authorization based on his application for TPS rather than on an application for asylum.

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 13, 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 Investigations (FBI) fingerprint results report indicates the following:

- (1) On October 6, 2003, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, driving with .08 percent blood alcohol level or higher; Count 2, failure to pay; and Count 3, "unlawful to drive unless."
- (2) On March 28, 2004, the applicant was arrested or received at the Department of Correction, San Jose, California, for driving with .08 percent blood alcohol level or higher; and Count 2, "unlawful to drive unless."

- (3) On February 27, 2006, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, "driving while privilege suspended/revoked for R;" and Count 2, "driving while privilege suspended/revoked for DU."
- (4) On April 6, 2006, the applicant was arrested or received at the Department of Correction, San Jose, California, for "driving while privilege suspended/revoked for DU."

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