



**U.S. Citizenship
and Immigration
Services**

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invasion of personal privacy**

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[REDACTED]

FILE: [REDACTED]
[WAC 05 117 70832]

Office: CALIFORNIA SERVICE CENTER

Date: **APR 30 2008**

INRE: 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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (TSC). 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 appeal will be sustained, and the applications will be approved.

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

The applicant filed an initial application for TPS on March 21, 2001, under receipt number WAC 01 168 50202. The director denied the initial application on May 16, 2004, because the applicant had failed to provide information regarding criminal charges listed on his record. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed an appeal.

The applicant filed this current Form I-821, Application for Temporary Protected Status, on January 25, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The record reflects that the applicant's fingerprints were taken and sent to the Federal Bureau of Investigation by Citizenship and Immigration Services. The record reveals the following charges:

1. On December 5, 2002, the applicant was arrested by the Sheriff's Office of Norwalk, California, for Fugitive From Justice.

On February 19, 2003, the director sent a Notice of Intent to Deny (NOID) to the applicant indicating that the record showed the applicant was wanted for homicide and second degree murder by the Broward County Sheriff's Office in Florida, and requesting the applicant provide the final disposition for these charges.

It is noted that in a notice of intent to deny dated February 19, 2003, the applicant was advised that records reveal "an active/outstanding warrant for homicide and second degree attempted murder, confirmed December 20, 2002, with Broward County Sheriff's Office (Florida);" and that the record also shows that on October 19, 1994, the applicant was charged with carrying a concealed firearm. The applicant was offered an opportunity to rebut the information and present information in his behalf before a decision is rendered. In response, the applicant, through an attorney, indicated that "the warrant for Homicide and second degree Murder has been withdrawn. Broward County Assistant State Attorney Kenneth Farnsworth dismissed this case and withdrew the warrant that relates to [redacted]." He added that regarding the applicant "being charged with carrying a concealed firearm, you have the wrong person. Mr. [redacted] was born January 12, 1956. The gentleman that corresponds to your facts regarding October 19, 1994 was [redacted] born June 10, 1976." He submits a copy of an arrest information and photo identification relating to a [redacted] date of birth June 10, 1976, from the Sheriff's office, Broward County. While it appears the this individual does not relate to the applicant, it is not clear from

the record the source from where the director obtained the information regarding the applicant's arrest for carrying a concealed firearm.

After a review by the AAO, it is determined that the information in the record relating to the homicide and second degree murder charges are based solely on a name similarity between the applicant and the actual suspect in those cases, and were not implicated in the fingerprint check conducted by the FBI. The information is unreliable and the AAO doubts the information is related to this applicant. Evidence in the record indicates the charge generated by the applicant's fingerprint check by the FBI arose from a ticket received by the applicant for a weights and measures violation in Norwalk, California, where the applicant resided at the time the actual suspect's warrants were issued in Florida. For this reason the director's dismissal based on the failure to provide dispositions for the homicide and second degree murder charges (which appear at this time to be unrelated to the applicant) is withdrawn. The record contains sufficient documentation relating to the single charge on the applicant's record, which is related to a traffic violation, and as a single misdemeanor does not render the applicant ineligible for TPS.

The applicant has satisfied all other eligibility requirements for TPS. Therefore, the application is approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained.