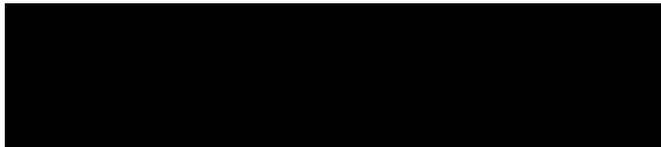




**U.S. Citizenship
and Immigration
Services**

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invasion of personal privacy

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FILE: [REDACTED]
[WAC 05 16471700]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 05 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 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, California Service Center, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously disapproved his application for re-registration. The appeal is now before the Administrative Appeals Office. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed a Form 1-821, Application for Temporary Protected Status, on February 11, 2005, and indicated that he was re-registering for TPS. However, the record as presently constituted, does not reflect that the applicant has ever filed an initial application or has previously been approved for TPS.

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 record does not reflect that the applicant has previously been granted TPS. Therefore, he is not eligible to re-register for TPS. The Form 1-821 submitted by the applicant should have been considered as an initial request for TPS. We note that the applicant appears to be eligible for late registration pursuant to 8 C.F.R. § 244.2(f)(2)(ii), as he has an asylum application that was pending during the initial registration for El Salvadorans.

The director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a partial copy of a webpage with information regarding his conviction for alcohol related offenses.

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 temporary protected status 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).

The regulation at 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.
8 C.F.R. § 244.1.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects that on February 16, 2003, the applicant was arrested by the San Bernardino Sheriffs Office and charged with one count of driving under the influence of alcohol or drugs "with priors" and one count of driving under the influence of alcohol with a blood alcohol content of at least .08 percent.

Pursuant to a letter dated April 13, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above and all other arrests that he may have had. In response, the applicant submitted a letter stating that he had hired an attorney and filed a motion to vacate his guilty plea. The applicant stated that he had a May 12, 2006, court date and requested additional time to submit the final court disposition of his offenses.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 5, 2006.

On appeal, the applicant submits what he states is a copy of a minute order vacating one of the charges for which he had been convicted.

The applicant failed to provide evidence from the San Bernardino Court of the final court disposition of his arrests as detailed above. The court should certify the final dispositions. Further, we note that the FBI report indicates that the applicant was charged with driving under the influence of alcohol or drugs "with priors." However, the applicant failed to provide any evidence revealing the final court disposition of other arrests that he had prior to February 16, 2003, by the San Bernardino Sheriffs Office. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.