



U.S. Citizenship
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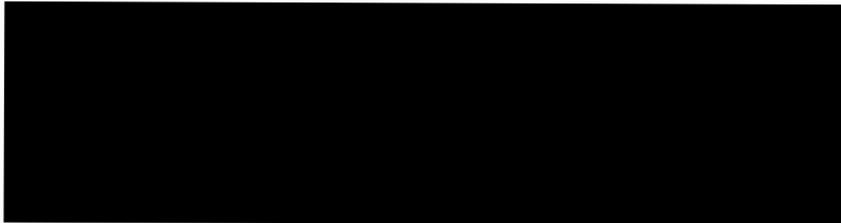
OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 210 85644]

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 June 4, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 02 200 52722. The director denied that application on January 3, 2003, because the applicant: (1) had failed to submit the final court dispositions of his arrests on October 12, 1982 for “burglary of residence,” and on April 9, 1993, for “lewd/lascivious acts with child under 14;” and (2) appeared inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation of facts, based on the applicant’s failure to disclose on the Form I-821 that he has been arrested. The director also dismissed the applicant’s motion to reopen on May 1, 2003, because the applicant had not submitted the final court dispositions of his arrests, and that the record continues to indicate that the applicant perpetuated a deliberate act of misrepresentation upon Form I-821.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on October 8, 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 submits court documents relating to his arrest on October 12, 1982, and states that court records indicate that “the case has been purged or destroyed.”

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 April 28, 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). 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 record indicates that the grounds for the director's original denial had not been overcome. The record indicates the following:

- (1) On October 15, 1982, in the Municipal Court of Burbank Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date October 12, 1982), the applicant was indicted for Count 1, burglary, 459 PC, a misdemeanor. On September 16, 1992, the court ordered the complaint amended by interlineation to add the misdemeanor offense of 853.7 PC, failure to appear after written notice, as to Count 2. The applicant was subsequently convicted of Count 2, and he was placed on probation for a period of 3 years under the condition that he serve 10 days in the county jail. Count 1 was dismissed.
- (2) The Federal Bureau of Investigation fingerprint results report indicates that on April 9, 1993, in Norwalk, California, the applicant was arrested for lewd/lascivious acts with a child under 14. The final court disposition of this arrest is not contained in the record.

The applicant, on appeal, resubmits a copy of the letter from the Superior Court of California, County of Los Angeles, dated February 11, 2003, regarding [REDACTED] indicating that pursuant to their records, "the case against this defendant has been purged or destroyed, in compliance with existing laws relating to case destruction." It is not clear in the record whether this case number relates to No. (2) above, or to any other arrests and/or convictions as the arrest information, such as, the date and place of arrest and

offense was not listed on the letter. Furthermore, the purging or destruction of court records is not evidence that the applicant was not convicted of the offense.

The applicant also resubmits a copy of the letter from the Los Angeles Superior Court of the State of California dated March 10, 2003, regarding [REDACTED] indicating that the indexes of the court had been examined by name only, and found no record of an action naming the above party/parties. It is noted that the only information used by the court to search their records is the applicant's name and date of birth. There is no evidence that the arrest information, such as, the date and place of arrest and offense, and other pertinent information, were used for the search, or under any and all names used by the applicant. It is noted that the applicant had used other assumed names: [REDACTED]

[REDACTED], and [REDACTED]. Furthermore, there is no evidence that the applicant's case was heard at this court. It may be assumed that the applicant would have known where his case was heard.

The applicant has failed to provide the final court disposition of his arrest detailed in No. (2) 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.

It is noted that the applicant's Form I-589, Request for Asylum in the United States, was denied on April 7, 1994, by the Director of Asylum, Los Angeles, California, and that Form I-221, Order to Show Cause and Notice of Hearing, was issued also on April 7, 1994.

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.