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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



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

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAY 25 2006**
[WAC 05 218 77860]

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: 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.


for 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 an initial TPS application on September 12, 2002, after the initial registration period had closed, under receipt number WAC 03 027 51413. The director denied that application on March 11, 2004, because the applicant had been convicted of a felony offense. 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 a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 6, 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.

On appeal, the applicant asserts that he has previously been approved for TPS. He further asserts that he has never applied for asylum. It is noted that the director erroneously indicated on Form I-797C, Notice of Action, dated August 1, 2005, that the Application for Employment Authorization, filed on May 10, 2005, was based on the applicant's claim of a pending Form I-589, Request for Asylum in the United States. As claimed by the applicant, and upon review of CIS records, there is no evidence that the applicant had applied for asylum in the United States.

The applicant's assertion that he has been granted TPS is without merit. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

If the applicant is filing a re-registration application, 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 application.

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:

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

- (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 shows that the applicant filed the current application with Citizenship and Immigration Services (CIS) on May 6, 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, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The record indicates the following arrests and/or convictions relating to the applicant:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on January 19, 1985, in Los Angeles, California, the applicant was arrested and charged with force-assault with a deadly weapon not firearm-great bodily injury likely, 245(a)(1) PC. The final court disposition of this arrest is not contained in the record although the applicant was requested, on December 1, 2003, to submit the court disposition of this arrest.
- (2) The FBI report indicates that on March 22, 1986, in Los Angeles, California, the applicant was arrested for burglary. The final court disposition of this arrest is not contained in the record although the applicant was requested, on December 1, 2003, to submit the court disposition of this arrest.
- (3) On November 28, 1986, in the Municipal Court of L.A., Central Arraignment Judicial, County of Los Angeles, California, [REDACTED] (arrest date November 26, 1986), the applicant was convicted of riding a bicycle while intoxicated, 21200.5 VC, a misdemeanor. Imposition of sentence was suspended

and the applicant was placed on probation for a period of 24 months, and ordered to pay \$150 in fines and costs or serve 5 days in the county jail.

- (4) On December 5, 1986, in the Municipal Court of L.A., Van Nuys Judicial District, County of Los Angeles, California, [REDACTED] (arrest date November 12, 1986), the applicant was indicted for possession of marijuana/hashish for sale, 11359 H&S, a felony. On January 5, 1987, the court dismissed the case based on "insufficiency of evidence." It is noted that the director erroneously indicated on the Notice of Decision that the applicant was convicted of this offense.
- (5) On January 29, 1988, in the Municipal Court of San Fernando Courthouse Judicial, County of Los Angeles, California, [REDACTED] (arrest date January 22, 1988), the applicant was indicated for grand theft: auto/miscellaneous, 487.3 PC, a felony. On November 7, 1988, the applicant entered a plea of guilty to the offense. He was placed on probation for a period of 3 years, and ordered to spend 9 months in jail.

Grand theft (No. 5 above) is a crime involving moral turpitude. *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964); *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974).

The applicant was convicted of a felony, detailed in No. 5 above, and this conviction precludes a favorable finding of eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to his felony conviction found to be a crime of moral turpitude (No. 5 above). Furthermore, the applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 1 and 2 above. Accordingly, 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.