**U.S. Department of Homeland Security**
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

SEP 0 5 2006

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 05 204 72847]

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 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 283 57635. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report indicated that the applicant was arrested in Oakland, California, on November 1, 1999, and charged with one count of "ASLT, COMIT LEWD/LASC. CHILD." On February 20, 2003, the applicant was requested to provide the final court disposition of his arrest. The applicant was instructed to respond to the Notice of Intent to Deny on or before March 20, 2003. The applicant failed to respond to the notice within the specified time period. The director, therefore, denied the application due to abandonment on July 29, 2003, because the applicant failed to provide the final court disposition of his arrest. It is noted that the applicant did respond to the notice; however, his response was not received until August 14, 2003, almost five months after the response date specified on the Notice of Intent to Deny and approximately two weeks after the issuance of the denial decision. The applicant submitted a document from the Superior Court of California, County of Alameda, Wiley Manuel Courthouse, stating that a complaint was never filed by the District Attorney's Office against [redacted] date of birth January 17, 1978, in connection with an arrest on November 1, 1999, on the charge of assault with the intent to commit rape in violation of PC 220/261, a felony. It is noted that the court document does not reflect the applicant's true name or date of birth. The applicant was born on January 25, 1978, not on January 17, 1978, as indicated on the court document, and his name is [redacted] not [redacted] In view of these discrepancies, this document cannot be accepted as proof that no complaint was ever filed in connection with this applicant's arrest on November 1, 1999. The applicant did not file to file an appeal or a motion to reopen within 30 days of the issuance of the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 22, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on June 13, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (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.
>
> (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 Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on April 22, 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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.

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.