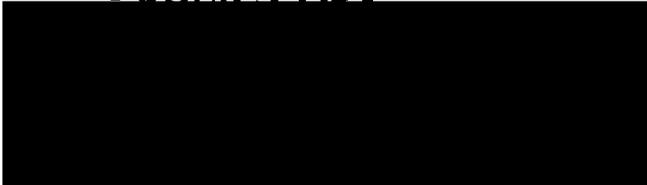


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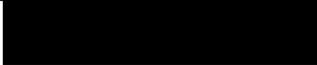
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Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 08 2006**

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IN RE:

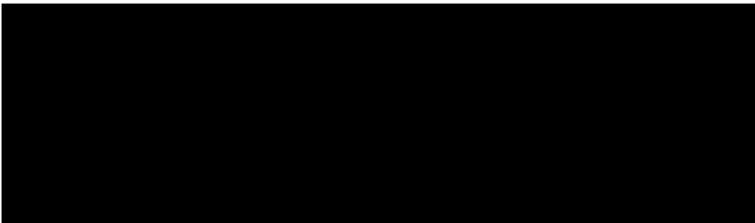
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant filed the current Form I-821, on January 20, 2005, and indicated that he was re-registering for Temporary Protected Status (TPS). After review, his TPS was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on May 6, 2004. The director subsequently withdrew the applicant's Temporary Protected Status on April 5, 2006, when it was determined that the applicant had been convicted of a felony or two or more misdemeanor offenses.

On appeal, counsel states that the applicant was only convicted of two "DUI's" and has not committed any other crimes ever since. Counsel argues that the applicant's felony case was "nolle prossed" and therefore does not make him ineligible to be granted TPS. Counsel indicates that CIS should take into account that the applicant's second DUI conviction took place in 1999 and is outside the five year statutory period that is normally taken into account when investigating good moral character.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

*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.

The applicant's Federal Bureau of Investigation Identification Record, contained in the record of proceeding, reflects the following:

- (1) On November 25, 1994, the Metro-Dade Police Department in Florida, arrested the applicant and charged him with driving under the influence (DUI).

- (2) On August 16, 1997, the Metro-Dade Police Department in Florida, arrested the applicant and charged him with (1) "TRAFFIC OFFENSE-DUI," (2) "TRAFFIC OFFENSE – DUI W PROP DAMAGE 002 CTS," (3) "DUI W SERIOUS BODILY INJURY."

The applicant did not provide the dispositions of his June 18, 1984, or his April 2, 1985, arrests, listed as Items #1 and #2 above.

The record contains the following Records of Disposition dated March 19, 2004, from the Deputy Clerk of the Dade County Circuit and County Courts of the State of Florida:

- (1) Case Number [REDACTED] Clerk's Certificate shows the applicant was found guilty of driving under the influence, a misdemeanor, on December 5, 1994.
- (2) Case Number [REDACTED] Clerk's Certificate shows the applicant was found guilty of operating a motor vehicle in a manner in violation of the restrictions imposed in a license issued to him, a misdemeanor, on December 5, 1994.
- (3) Case Number [REDACTED] Clerk's Certificate shows the applicant was found guilty of driving under the influence, a misdemeanor, on January 20, 1999.

The record shows that the applicant has been convicted of two or more misdemeanors. Therefore, the director's determination to deny the TPS application shall not be disturbed.

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 Salvador was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his initial application on September 5, 2003, and the current application with CIS on January 20, 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 record of proceeding contains a copy of the applicant's marriage certificate indicating that he married [REDACTED] on April 2, 2004 and his claim that he is eligible for TPS as the spouse of an alien who is "under the TPS registered." In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the initial registration period, he is not eligible for late registration for that reason.

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.

It is noted that, in removal proceedings held on March 31, 1998, an Immigration Judge (IJ), in Los Angeles, California, found the applicant had not proven his claim for asylum and ordered him deported to El Salvador. The applicant appears to have exhausted all appeal and motion rights when the Board of Immigration Appeals dismissed his appeal to the IJ's determination on January 27, 1999. There is no evidence in the record that the applicant departed from the United States as ordered. It is further noted that the record contains an outstanding Form-205, Warrant of Removal/Deportation, issued by the District Director of the Los Angeles, California, Georgia, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on April 19, 1999.

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.