



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

*ML*

[REDACTED]

FILE:

[REDACTED]

[WAC 05 131 79834]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 (AAO) 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 01 165 50706. The record revealed the following offenses:

1. On June 9, 1992, the applicant was convicted in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. (Date of Arrest: June 8, 1992; Case Number [REDACTED])
2. On July 22, 1993, the applicant was convicted in the Municipal Court of Compton Judicial District, County of Los Angeles, State of California, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. (Date of Arrest: April 9, 1993; Case Number [REDACTED])
3. On December 22, 1997, the applicant was convicted in the Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. (Date of Arrest: December 21, 1997; Case Number [REDACTED])

The District Director, Los Angeles, California, denied that application on February 6, 2006, because she found that the applicant had been convicted of three misdemeanors.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 8, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on April 7, 2006, 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.

[REDACTED]

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 February 8, 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). Furthermore, the applicant is ineligible for TPS due to his record of three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). It is noted that the applicant, on appeal, states that all three cases “were closed” with regard to his three misdemeanor DUI convictions because he “accomplished all the superior court’s requirements.” The applicant provided photocopies of three petitions dated March 1, 2006, before the Superior Court of California, County of Los Angeles, seeking expungement of his misdemeanor convictions because he had successfully completed his probation. The applicant has not provided any proof that these petitions were actually filed with the Superior Court of California, County of Los Angeles, or that the petitions were granted. Nevertheless, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Even if the court were to grant the applicant’s petitions, his three misdemeanor convictions would still constitute convictions for immigration purposes. Therefore, the application also must be denied for these reasons.

It is noted that an Immigration Judge in ordered the applicant removed to El Salvador on January 11, 1994. The applicant’s appeal from the judge’s order was dismissed on June 22, 2000, and the Immigration Judge’s removal order was affirmed. There is no indication in the record that a warrant of removal has been issued in this case.

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.