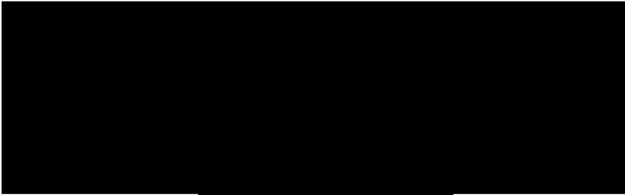




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUL 16 2007

[WAC 05 210 76081]

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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster, does not list either the individual or the organization as recognized entities. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The record reveals that the applicant filed a TPS application during the initial registration period on December 18, 2001, under receipt number SRC 02 062 54502. The Director, Texas Service Center (TSC), denied that application on February 9, 2004, because the applicant had failed to respond to a request to submit the final court dispositions of all of his arrests. The applicant appealed the director's decision to the AAO on March 16, 2004. The AAO rejected the appeal on September 18, 2006, because the appeal was untimely filed. The AAO also found that the applicant was ineligible for TPS due to his convictions of two misdemeanor offenses.

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 18, 2006, 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 his initial TPS application should never have been denied because he did respond to the director's request for additional evidence in a timely manner. He further asserts that he has met his burden of establishing *prima facie* eligibility for a grant of TPS, and that he is eligible for TPS because he also has presented sufficient probative documentation to demonstrate that his initial application for TPS benefits had been erroneously denied. He submits additional evidence.

A review of the record indicates that the applicant did respond to the TSC director's request for court dispositions of his arrests. The AAO, however, is correct in dismissing the applicant's appeal on September 18, 2006, based on his record of at least two misdemeanor convictions.

The applicant is filing the current TPS application as a re-registration; therefore, 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.

The record reflects the following arrests and/or convictions relating to the applicant:

1. The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on October 27, 1995, the applicant was arrested by the Metro-Dade [Florida] Police Department and charged with Count 1, driving under the influence; and Count 2, driving while license suspended. In response to the TSC director's request for evidence, the applicant submitted court records indicating that on December 12, 1995, in the County Court in and for Dade County, Florida, under Case Number [REDACTED] the applicant entered a plea of *nolo contendere* and the court found him guilty of Florida Statute (FS) 316.193 [driving under the influence], a misdemeanor; he was placed on probation for a period of 6

months, to complete 50 hours of community service, and ordered to pay \$589.75 in fines and costs, as to Count 1. As to Count 2, the applicant subsequently submitted court documents indicating that on December 12, 1995, in the County Court in and for Dade County, Florida, under Case Number [REDACTED] the applicant entered a plea of *nolo contendere* and the court found him guilty of FS 324.201 [driving while license suspended], a misdemeanor; the court document does not reflect a sentence imposed on the applicant, rather, it indicates that "after a diligent search of Dade County records, we are unable to locate: The above styled case has been destroyed in compliance with Florida Retention schedules." The destruction of court records is not evidence that the applicant was not convicted of Count 2.

2. The FBI report indicates that on August 10, 1997, the applicant was arrested by the Metro-Dade Police Department and charged with Count 1, assault or battery; and Count 2, resisting officer without violence. The FBI report also contains supplemental information from the State Attorney's Office reflecting a plea of not guilty to both charges and the applicant was placed on a pretrial diversion on September 12, 1997. The applicant submitted court records from the Circuit and County Courts of the Eleventh Judicial Circuit of Florida, Miami-Dade County (under Case No. [REDACTED] also indicting that no sentence or punishment was imposed on the applicant, and that on May 12, 1998, a *nolle pros* was entered on the case based on the applicant's completion of his diversion. For immigration purposes, the applicant, in this case, was not convicted of the charges.
3. The FBI report indicates that on September 27, 1997, the applicant was arrested by the Metro-Dade Police Department and charged with driving under the influence. The applicant subsequently submitted court records indicating that on April 29, 1998, in the County Court in and for Dade County, Florida, Case No. [REDACTED] the applicant was convicted of (FS) 316.193 [driving under the influence]. He was placed on probation for a period of 12 months, ordered to pay \$1,434.25 in fines and costs, and his driver's license was suspended/revoked for 5 years.
4. On appeal, the applicant submitted a Dade County Court-Traffic Division Calendar relating to an arrest of November 8, 1993, Case No. [REDACTED] for violation of FS 322.03 [no valid driver's license]. The calendar shows: "Case Action - 06; Plea - N; ISS - 10/4/93; Continuance - 01." The final disposition of this arrest is not contained in the record.

The applicant was convicted of at least two misdemeanors and his convictions continue to preclude a favorable finding of eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Also, the reasons for the initial denial have not been overcome. Therefore, the application also must be denied for this reason.

It is noted that Form I-221, Order to Show Case and Notice of Hearing, was issued on May 3, 1993, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about December 1, 1990.

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.