



U.S. Citizenship  
and Immigration  
Services

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FILE:



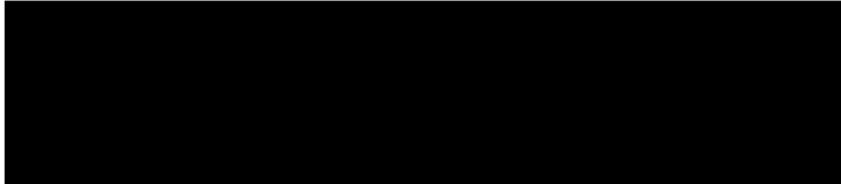
OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 22 2007**

[WAC 02 040 55902]

IN RE:

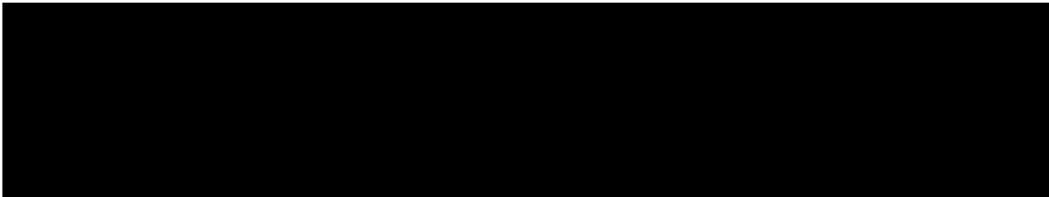
Applicant:



APPLICATION:

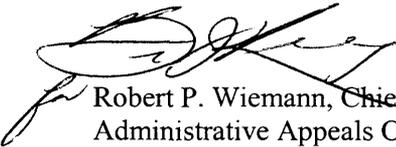
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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 claims to be 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 a TPS application during the initial registration period on October 9, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 02 040 55902. The director denied that application on July 6, 2006, because the evidence furnished by the applicant in response to the Notice of Intent to Deny dated May 1, 2006, was insufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods, and evidence of final court disposition of his arrest.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 24, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application also on July 6, 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, counsel asserts that a prima facie case had been established with documents previously submitted, that the applicant's initial TPS application was approved based on the same documents presented, and that this is "simply a re-registration." He submits additional evidence to establish residence and physical presence, a letter from the Superior Court, County of Alameda, California, and a copy of a clearance letter from the City of Oakland, California, Police Department.

Counsel's assertion that the initial TPS application had been approved is without merit. The fact that the applicant was issued EADs is not evidence that he was approved TPS. 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* eligibility<sup>1</sup> 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.

The applicant filed 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.

An alien shall not be eligible for temporary protected status 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 8 C.F.R. § 244.4(a).

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<sup>1</sup> 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 un rebutted will establish a claim of eligibility under section 244 of the Act.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on June 28, 2001, in Berkeley, California, the applicant was arrested (name used: [REDACTED] for Charge 1, solicit lewd act; and Charge 2, prostitution. In a Notice of Intent to Deny dated May 1, 2006, the applicant was requested to submit the final court disposition of this arrest, including any and all arrests. In response, the applicant submitted a letter dated December 9, 2003, from the City of Oakland Police Department indicting that [REDACTED] "does not have a criminal conviction history in the Alameda County CORPUS file," and that a fingerprint check was not performed nor a search made of any other file. On appeal, counsel resubmits a copy of that letter, and also submits a letter dated July 24, 2006, from the Superior Court, County of Alameda, Juvenile Division, certifying that a careful search of the juvenile current and history indexes do not find a juvenile record wherein [REDACTED] was mentioned as a ward in the Superior Court Juvenile records of the Alameda County Court.

The applicant, in this case, was advised to submit the final disposition of his arrest from the court where the hearing took place. It is noted that the only information used by the court and the police to search their records is the applicant's name. There is no evidence that the arrest information, such as the date and place of arrest and offense, and other pertinent information, were used for the search. Further, there is no evidence that the applicant's case was heard at that court. It may be assumed that the applicant would have known where his hearing took place. The FBI report indicates that the applicant was arrested in Berkeley, California.

The applicant has failed to provide the final court disposition of his arrest detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application also must be denied for this reason.

The FBI report also indicates that on January 29, 1999, in Brownsville, Texas, the applicant was apprehended by the United States Border Patrol, file [REDACTED] was created, and he was subsequently placed in removal proceedings. File [REDACTED] was reviewed and it was revealed that upon apprehension of the applicant subsequent to his entry into the United States without inspection on January 29, 1999, he stated that he is a national and citizen of Honduras. The file contains a Republic of Honduras passport issued to [REDACTED] and a Republic of Honduras identity card issued to [REDACTED]. A Warrant of Removal/Deportation, Form I-205, was issued in San Francisco, California, on March 10, 1999, based on the final order of removal by an immigration judge.

On October 9, 2001, the applicant filed Form I-821, Application for Temporary Protected Status, under receipt number WAC 02 040 55902. File [REDACTED] was created. He indicated on the Form I-821 that he is a national and citizen of El Salvador, and included a copy of an El Salvadoran birth certificate. He subsequently submitted a copy of an El Salvadoran passport issued to the applicant on March 1, 2005, in San Francisco, California.

The Honduran passport and the El Salvadoran passport, both issued to the applicant, render his identity questionable and reduces the credibility of the applicant. Additionally, the authenticity of the Honduran passport and identity card, and the El Salvadoran birth certificate are also questioned. Presenting fraudulent documents may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C) of the

Act, as an “alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act.”

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.