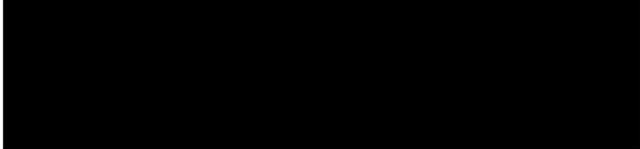


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U.S. Citizenship  
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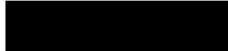
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FILE:



OFFICE: California Service Center

DATE:

[WAC 01 197 57231]

IN RE:

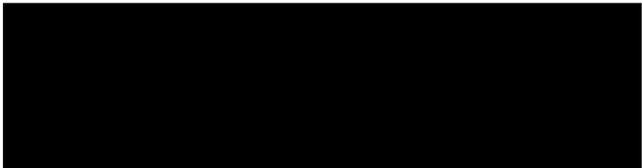
Applicant:



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.

*Cindy N. Gomez*  
for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center (CSC), and his application for re-registration was denied. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decisions will be withdrawn. The applicant's Temporary Protected Status will be restored and the re-registration application will be approved.

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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial

registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

An alien shall not be eligible for TPS 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. See section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor" as follows:

*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 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 Citizenship and Immigration Services (CIS). See 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 the burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. See 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status [WAC 01 197 57231], on April 30, 2001. It was approved on February 7, 2002. The applicant filed his current application for re-registration or renewal of TPS [WAC 05 113 74268] on January 21, 2005.<sup>1</sup>

On March 30, 2005, the CSC Director issued a Request for Evidence (RFE) in which the applicant was requested to submit a certified copy of the final court disposition of an arrest on May 8, 2004 by the Santa Ana Sheriff's Office. The applicant was advised to submit the requested documentation by June 30, 2005. The CSC Director sent the applicant another RFE on June 29, 2005, requesting the same documentation – *i.e.*, a final court disposition of the arrest on May 8, 2004 – and listing the three charges from the arrest as burglary, first degree burglary, and receiving stolen property. The applicant was given until September 22, 2005 to respond.

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<sup>1</sup> The applicant also filed TPS re-registrations in 2002 and 2003.

On January 30, 2006, the CSC Director issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS, in accordance with section 244(c)(3)(A) of the Act and the regulation at 8 C.F.R. § 244.14(a), referring to section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), which specify that an alien convicted of a felony or two or more misdemeanors committed in the United States is ineligible for TPS. The director repeated his request for evidence of the final court disposition(s) of the applicant's arrest on May 8, 2004, and any other arrests, giving the applicant 30 days – until March 1, 2006 – to respond.

On September 13, 2006, the director issued a Notice of Withdrawal of TPS and Notice of Decision to Deny TPS Re-Registration, stating that the applicant had failed to respond to the NOIW, which constituted both a failure to re-register for TPS in the form and manner specified by CIS and an abandonment of the re-registration application within the meaning of 8 C.F.R. § 244.9(c) and 8 C.F.R. § 244.17(a). The director withdrew the applicant's TPS for failure to comply with re-registration requirements specified in 8 C.F.R. § 244.14(a)(3) and 8 C.F.R. § 244.17(c), and denied the re-registration application on the ground of abandonment for failure to provide the final court dispositions of any and all criminal arrests/convictions.

On appeal, counsel asserts that the applicant complied with the CSC Director's successive requests for evidence in a timely manner. In response to the initial RFE, counsel states that the applicant obtained a certified letter from the Superior Court of California, County of Orange, on April 14, 2005, which indicated that a criminal record check from 1990 to the present for felonies, and 1998 to the present for misdemeanors, did not reveal any criminal record for the applicant. A copy of this letter is submitted with the appeal, together with a receipt confirming that the court received \$5.00 from the applicant on April 14, 2005 for "copywork, one search, non-case payment." According to counsel, the court letter was sent by certified mail to the CSC on June 11, 2005, and duly received on June 17, 2005. As evidence thereof, counsel submits a copy of a certified mail receipt confirming that a document was mailed to the CSC on June 11, 2005, at a cost of \$4.42, and was stamped as received by the CSC on June 17, 2005. According to counsel, the applicant's arrest was a case of mistaken identity and no criminal charges were filed. Counsel states that the applicant again submitted the court letter of April 14, 2005 to the CSC after the NOIW was issued. As evidence thereof counsel submits a copy of a certified mail receipt bearing a stamp of the California Service Center dated February 23, 2006. In addition, a letter from the Captain of the Support Services Division, Sheriff-Coroner Department, Orange County, California, dated March 6, 2007, is attached to a transcript indicating the final disposition of the case occurring on the same date as the arrest, with the reason cited as "WDEF." An inquiry made to the Sheriff's Department, Records Division, on July 18, 2007, reveals that the suspect was released and the code is identified as "Wrong Defendant."

Based on the foregoing evidence, the AAO concludes that the applicant submitted timely responses to the CSC's initial RFE and subsequent NOIW, and that the letter from the Superior Court of California, County of Orange, dated April 14, 2005, indicates no criminal record resulting from the applicant's arrest on May 8, 2004, or any other arrests. The AAO determines that the applicant has overcome the basis for the director's withdrawal of his TPS and the denial of his TPS re-registration application. There are no other known grounds of ineligibility. Accordingly, the director's decisions will be withdrawn and the appeal will be sustained.

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 met that burden.

**ORDER:** The director's decisions are withdrawn and the appeal is sustained.