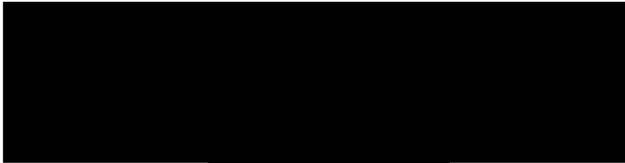




**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC Copy



FILE:



Office: California Service Center

Date: **APR 04 2008**

[WAC 06 123 70015]

INRE:

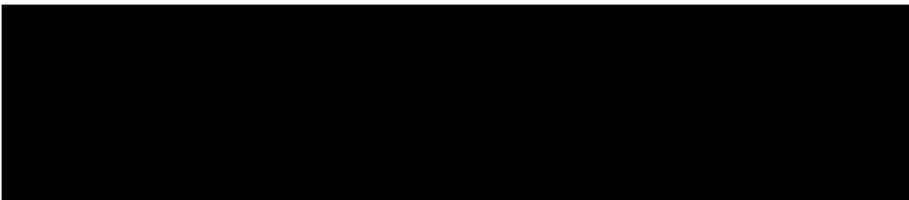
Applicant:



APPLICATION:

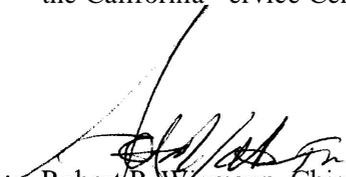
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The application will be reopened by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 record reveals that the applicant filed a late initial TPS application on January 30, 2006, under Citizenship and Immigration Services (CIS) receipt number WAC 06 123 70015. The director denied the application on August 3, 2006, because the applicant failed to establish his eligibility for late initial registration for TPS.

On appeal, counsel reasserts that the applicant is eligible for TPS, and states that the applicant has provided the requested court disposition pertaining to a case number [REDACTED]. With the appeal, counsel submits court documents indicating that the records for case number [REDACTED] had been purged pursuant to the court's record retention requirements.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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 parole; 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.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on January 30, 2006.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

In order for the applicant to be eligible for late TPS registration, as a former asylum applicant, he should have submitted his TPS application, no later than 60 days immediately following termination of his asylum application pursuant to the regulations 8 C.F.R. § 244.2(f)(2) and 8 C.P.R. § 244.2(g). The record reflects that the applicant's asylum application filed on October 31, 1990, was denied on December 15, 2005. The applicant filed

his initial TPS application, on January 30, 2006, within 60 days after the denial of his asylum application. The applicant is eligible to file a late initial application for TPS on the basis of his prior asylum application. Accordingly, the applicant has met the regulatory requirements for late initial registration. Therefore, the director's denial of the application for this reason is withdrawn.

However, the application may not be approved at this time because the applicant has not submitted final court dispositions for an arrest and charges revealed in the record. It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that on July 10, 1997, the applicant was arrested by the Police Department, North Las Vegas, Nevada, and charged with "3RD DEGREE LARCENY - PETIT."

As noted above, on appeal, counsel does not submit a final court disposition. Instead, counsel submits a court letter indicating that the records for case number _ had been purged pursuant to the court's record retention requirements. However, the fact that his record have been destroyed does not mean that applicant was not convicted. The burden is no the applicant to provide affirmative evidence that he is eligible for the benefit sought.

In addition, the record of proceedings reflects that on March 16, 1999, the Las Vegas Metropolitan Police Department charged the applicant with "TRESPASS" (MPD Docket No. [REDACTED]).

It is noted that final court dispositions for these arrests are not in the record. CIS must address these arrests and any convictions in any future proceedings.

The case will, therefore, be remanded so that the director may enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

The director may request any evidence deemed necessary, including final court dispositions for the arrests and charges described above, to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision.