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U.S. Department of Homeland Security
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Washington, DC 20536



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

[Redacted]

[Handwritten signature]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUL 28 2004

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:
[Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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.

The director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel for the applicant asserts that the applicant believed everything was complete in his initial application (submitted in 2001), and responded to the Notice of Intent to Deny "as soon as he was able to acquire the requested evidence." Counsel states that the Service, [now Citizenship and Immigration Services (CIS)], received all the information requested and, therefore, should have reopened and approved the August 2001 application for TPS.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an application for TPS during the initial registration period on August 30, 2001. On January 15, 2003, the director requested additional evidence establishing the applicant's nationality, date of entry into the United States, and continuous physical presence in the United States since March 9, 2001. That application was denied for abandonment on March 4, 2003, due to the applicant's failure to respond to the request for additional evidence. The director informed the applicant that an application denied due to abandonment cannot be appealed, but a motion to reopen or reconsider could be filed within 30 days. The director also stated the requirements for each type of motion. The applicant did not file a motion during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on May 12, 2003, checking the box indicating that this application was for annual registration/re-registration, that TPS had previously been granted, and that the applicant continued to maintain the conditions of eligibility. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also noted that the applicant's initial TPS application, filed in August 2001, had been denied on March 4, 2003, and that the applicant's response to the January 2003 request for additional evidence was not received until May 13, 2003, subsequent to the decision.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS 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.

The applicant filed a subsequent Form I-821 on May 12, 2003. Since the initial application was denied on March 4, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 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.

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 this application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 12, 2003.

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 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).

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).

On June 27, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence of his physical presence in the United States and his nationality.

The director determined that the applicant had failed to establish he was eligible for late registration and denied this application on September 6, 2003.

On appeal, counsel for the applicant asserts that the applicant submitted all of the requested information and, therefore, CIS should reopen and approve the August 2001 application.

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. As discussed above, while the applicant had filed an application within the initial filing period, that application was denied due to abandonment, and the applicant did not file any motion to reopen or reconsider in the requisite timeframe. Counsel's assertion that CIS should reopen the August 2001 application is not persuasive. It is further noted that, even had the evidence been received timely, while the evidence submitted does establish the applicant's nationality, it is not sufficient to establish the applicant's continuous physical presence in the United States for the requisite timeframe. Moreover, the applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence during the requisite time period. Therefore, the application must also be denied for this reason.

Finally, it is noted that another Form I-821 was submitted for re-registration on November 4, 2002. That application has not yet been adjudicated.

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.