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U.S. Citizenship  
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FEB 10 2005

FILE: [REDACTED]  
[SRC 02 085 5555]

Office: TEXAS SERVICE CENTER Date:

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: 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*  
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 (AAO) on appeal. The appeal will be rejected.

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 after determining that the applicant's initial Form I-821, Application for Temporary Protected Status, had been previously denied.

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 initial application for TPS during the initial registration period. That application was denied due to abandonment on September 23, 2002, based upon the applicant's failure to respond to the director's July 26, 2002, notice of intent to deny and request for additional evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite dates. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant, however, did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 3, 2003, containing a new address. The director denied this second application because the initial TPS application had been denied. Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of the basis for denial. While the director found the applicant ineligible for TPS because her initial TPS application had been previously denied, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on January 14, 2002. That initial application was denied by the director on September 23, 2002. 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 March 3, 2003. Since the initial application was denied on September 23, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration. The applicant, however, failed to submit any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

It is noted that the director's letter of May 16, 2003, states, in pertinent part: "Since your I-821 has been denied, the subsequently filed I-821 and I-765 [Application for Employment Authorization] must also be denied. There is no appeal from this decision." A separate paragraph on a second page, by contrast, states: "You have the right to appeal this decision denying Temporary Protected Status. You may file a notice of appeal (Form I-290B)...within 30 days of the date of this decision."

Because this subsequent application may be considered an application for late initial registration, the director erred in the portion of the letter stating that there was no right of appeal to the decision denying Temporary Protected Status.

However, an appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial, dated May 16, 2003, in part, advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 17, 2003. The appeal was received at the Texas Service Center on November 6, 2003.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

It is noted that the record includes another subsequent Form I-821 application that the applicant attempted to file on September 19, 2003, again on October 4, 2003, and that is date-stamped on November 6, 2003. The record includes a rejection notice dated October 4, 2003, which informed the applicant that her re-registration TPS and employment authorization applications were being returned because her initial TPS application had been denied on September 23, 2002, and therefore the applicant is not required to register annually.

It also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence and continuous physical presence during the requisite time periods. The record includes photocopies of the applicant's Social Security card and the birth certificates for her three sons, born in Texas on October 14, 1998, and in Florida on December 5, 2001, and April 9, 2003. This evidence alone is insufficient to establish continuous residence and continuous physical presence in the United States.

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 appeal is rejected.