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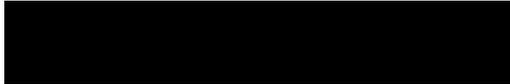
Office: TEXAS SERVICE CENTER

Date: JUN 02 2005

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IN RE:

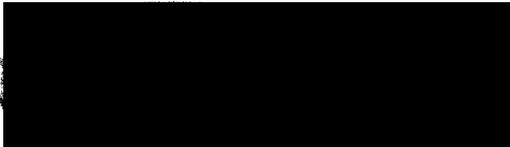
Applicant:



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

On appeal, counsel submits a statement and additional evidence.

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 on March 28, 2001. That application was denied based on abandonment on November 6, 2002, because the applicant had failed to submit: (1) arrest records and the final court dispositions of all arrests, including the applicant's arrest on June 4, 1999, in Arkansas, for leaving the scene of an accident; (2) evidence to show that he had continuously resided in the United States since February 13, 2001; and (3) evidence to show that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

The applicant filed a subsequent Form I-821 application on March 3, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant has no approved Form I-821 in order for this application to be considered a re-registration. Since the applicant did properly file an application during the initial registration period, the director did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 28, 2001. That initial application was denied by the director on November 6, 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 for 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 November 6, 2002, 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 alien 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.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, 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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his TPS application on March 3, 2003.

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). 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).

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on May 29, 2003.

On appeal, counsel submits additional evidence in an attempt to establish the applicant's qualifying residence and physical presence in the United States, and court documents relating to his arrests and/or convictions in Arkansas.

This evidence, however, does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. 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.

Counsel, on appeal, asserts that the applicant concedes he had been convicted of two or more violations as contemplated under Arkansas Code section 5-1-08, but denies he had been convicted of two or more misdemeanors as defined under Arkansas Code section 5-1-07. He submits the following court documents:

- (1) Convicted on November 18, 1998, [REDACTED] for driving-failure to yield.
- (2) Convicted on January 16, 1999, [REDACTED] for speeding 11-15 miles over, and for no insurance.
- (3) Convicted on May 11, 1999, Case No. [REDACTED] for fictitious tags/vehicle license.
- (4) Convicted on July 7, 1999, Case No. [REDACTED] for key in unattended vehicle, and for handicap parking.

The record also reveals the following:

- (5) The applicant was convicted on November 25, 1999, Case [REDACTED] for speeding 16-20 miles over.
- (6) The Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on June 4, 1999, in [REDACTED], for leaving the scene of an accident. The court's final disposition of this arrest is not contained in the record although the applicant was requested on September 21, 2002, to provide the final court disposition of this arrest and all other arrests.

While counsel asserts that the applicant's convictions are violations, it is noted that fictitious tags/vehicle license (No. 3 above), Arkansas Code 27-14, may be a misdemeanor or a felony, and speeding in excess of 15 miles per hour over posted speed limit (No. 5 above), Arkansas Code 27-50, is a misdemeanor. The applicant appears

to fall under the provisions of section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), based on these convictions.

The burden of proof is upon the applicant to establish 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.