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U.S. Citizenship
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Services

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FILE:

[REDACTED]
[SRC 03 047 53818]

Office: TEXAS SERVICE CENTER

Date: JUN 27 2005

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.

Cindy M. Gomez for

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

On appeal, the applicant states that he previously requested a copy of the director's March 26, 2003 denial of his TPS application, because he needed to understand the reason for denial. He states that he never received a response and asks that his case now be reopened. The applicant provides copies of his previous applications and receipt notices. The applicant submits additional evidence in support of the appeal.

It is noted that the request for additional evidence and the notice of decision were properly mailed to the applicant's last known address as provided on his applications; the applicant provided changes of address on the applications he submitted as re-registration applications, but did not submit any change of address notification between those periods.

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 March 26, 2003, advised the applicant that there was no appeal to the decision denying re-registration for TPS, and revoking the interim employment authorization.

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 April 28, 2003. The appeal, however, was not received at the Texas Service Center until October 29, 2003.

It is noted that the applicant had filed an initial application for TPS on April 2, 2001, [identified under SRC 01 163 55321], during the initial registration period. That application was denied on July 26, 2002, due to abandonment based upon the applicant's failure to respond to the director's April 8, 2002, request for additional evidence that asked for the applicant to submit photo identification, or any national identity document from his country of origin bearing a photograph and/or fingerprint. 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 subsequently submitted this Form I-821, received on December 4, 2002. On March 26, 2003, the director denied this second application because the initial TPS application had been denied on July 26, 2002. The director also stated there was no appeal from this decision. The director erred in her explanation of the basis for

denial. While the director found the applicant ineligible for TPS because his initial TPS application had been previously denied, the director's decision did not sufficiently explain the entire basis for denial.

As noted above, the applicant's initial Form I-821 was properly filed on April 2, 2001, and denied by the director on July 26, 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.

Although the applicant checked the box indicating that his subsequent Form I-821, filed on December 4, 2002, was an application for re-registration, because the initial application had been denied on July 26, 2002, this subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration. 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.

Nevertheless, 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, the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The applicant presented evidence of a settlement with AllState Insurance Company, dated November 22, 2000, for an accident that occurred on May 21, 2000, and two doctor's treatment letters dated in June 2000. While these documents reflect the applicant's presence in the United States prior to February 13, 2001, this evidence does not establish his continuous residence or continuous physical presence since February 13, 2001.

It is noted that the pay stubs from the Hotel Intercontinental Dallas, Addison, Texas, indicate a different social security number than that which appears on the applicant's Social Security Card and the dates appear to have been altered. These pay stubs dated March 31, 2000, January 5, 2001, and January 19, 2001, also indicate an address that the applicant did not give as his address until beginning in the year 2002, and which differs also from the applicant's address as provided on a letter from a potential employer dated in the same timeframe. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has, therefore, also failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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

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.