



U.S. Citizenship
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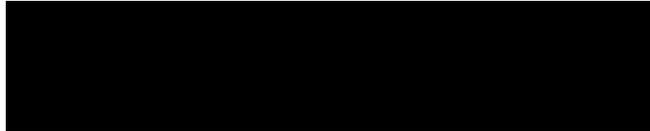
Office: CALIFORNIA SERVICE CENTER

AUG 01 2006
Date:

[WAC-05-223-81188]

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: 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims 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 Form I-821, Application for Temporary Protected Status on September 15, 2003 under CIS receipt number SRC-03-258-54519. The application was denied by the Director, Texas Service Center, on March 13, 2004 because the applicant failed to submit documents in response to a Notice of Intent to Deny requesting additional evidence and, therefore, had abandoned his application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005 and indicated that he was re-registering for TPS.

The Director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was therefore not eligible to apply for re-registration under TPS.

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.

On appeal, applicant claims that he never received the Notice of Decision denying his application mailed to him on March 13, 2004. He also stated that he notified the Service of his change of address by telephone as well as by submitting Form AR-11. However, applicant did not submit any evidence that he mailed the change of address notification on Form AR-11 to the Service. Neither did he indicate when he mailed the above form.

In this case, the applicant had not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the record of proceedings contains documents indicating that applicant was apprehended by the Allegheny County Sheriff's Department on September 6, 2004 for fighting with his girlfriend. He was charged with Public Drunkenness, Reckless Endangering, Criminal Mischief and two counts of Criminal Conspiracy. The two counts of Criminal conspiracy were dismissed and the Public Drunkenness was reduced to a summary offense. He was sentenced to time served and transferred to the custody of the Immigration and Customs Enforcement. He was issued a Notice to Appear (NTA) in person on December 22, 2004 for being present in the United States without being admitted or paroled. The NTA also ordered applicant to appear before an immigration judge of the United States Department of Justice in Atlanta, GA on October 20, 2005. A second NTA was issued to the applicant on February 22, 2005 by certified mail superseding the earlier NTA changing the alien's file number from A098 492 294 to A094 861 595. On March 23, 2006, the applicant applied for and was granted voluntary departure in lieu of removal on or before July 21, 2006.

It is further noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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.

The initial registration period for El Salvador was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on May 11, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.