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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 21 2006

[WAC 05 208 74896]

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.

*Cindy M. Gomez for*

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 (AAO) 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 record reveals that on August 8, 2001, during the initial registration period, the applicant filed an earlier TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration (CIS) under receipt number SRC 01 254 54309. The Texas Service Center (TSC) Director denied that application due to abandonment on April 2, 2003, because the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. The applicant had been requested to submit evidence establishing his: qualifying continuous residence in the United States since February 13, 2001; continuous physical presence in the United States since March 9, 2001; and his nationality and identity.

On September 22, 2003, the applicant filed a motion to reopen the denial decision. Because the Notice of Intent to Deny and the Notice of Decision to Deny had been mailed to an incorrect address, the TSC Director reopened the initial TPS application, and again on April 30, 2004, and on July 15, 2004, asked that the applicant submit the requested evidence. The record does not contain a response from the applicant. Therefore, on September 22, 2004, the TSC Director again denied the initial TPS application due to abandonment because the applicant failed to respond to the requests for additional evidence. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, and indicated this was an application for re-registration or extension of TPS benefits.

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

On appeal, the applicant states that he has been living in the United States since July 7, 1997, and asserts that because he was here prior to February 13, 2001, and does not have a criminal record, he qualifies for TPS. In support of the appeal, the applicant submits a copy of the earlier September 2003 motion to reopen, with the corresponding money order and mailing receipts.

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.

In this case, the applicant has 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 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 Salvadorans was from March 9, 2001, to September 9, 2001. The record reveals that the applicant filed the current application with CIS on April 26, 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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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). Although the applicant previously submitted an application for TPS during the initial registration period, any Form I-821, 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. Because the initial application was denied on September 22, 2004, this subsequent application cannot be considered as a re-registration, but only as an application for late registration. However, the applicant has not established his eligibility for late initial registration, and, therefore, this application must be denied for this reason.

In addition, the applicant has not submitted sufficient evidence to establish his date of entry into the United States prior to February 13, 2001, his continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for this reason.

Further, the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit photo identification or a national identity document from his country of origin bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also 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.