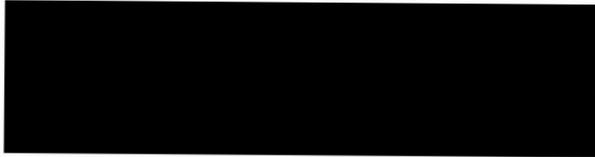


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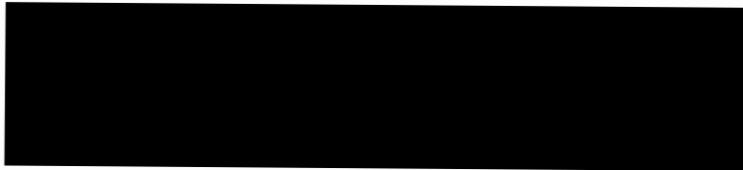
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FILE: [REDACTED]  
[WAC 05 228 78595]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 14 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 record reveals that the applicant filed a TPS application during the initial registration period on March 20, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 148 58363. The Director, Texas Service Center, denied that application based on abandonment on June 27, 2003, because the applicant had failed to respond to a request dated April 18, 2003, to submit police history and clearance checks for every city where he had lived for the past five years, and the final court dispositions of all of his arrests. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that this is his “first application to register for Temporary Protected Status (TPS).”

The Director, California Service Center, treated the application as a re-registration application and determined that because the applicant’s initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the applicant is not seeking TPS re-registration based on a previous application; instead, he submitted a new application under late initial registration. Counsel states that the director’s notice of action dated September 21, 2005, concerning Form I-765, Application for Employment Authorization, indicates that the applicant was given 30 days to submit his asylum application and failed to do so; however, the applicant received no such request, and that the Form I-765 application was based on late initial filing for TPS, not based on asylum. It is noted that the director incorrectly stated on Form I-797C, Notice of Action, that Form I-765 was based on the applicant’s claim of a pending Form I-589, Request for Asylum in the United States. As maintained by counsel, the Form I-765 was based on the applicant’s application for TPS rather than on an application for asylum. Counsel submits additional evidence.

Accordingly, this application will be treated as the applicant’s “first application” to register for TPS.

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 § 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.
- (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 condition described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 reveals that the applicant filed the current application with CIS on May 16, 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).

Counsel, on appeal, submits a copy of an El Salvadoran marriage certificate indicating that the applicant married [REDACTED] on July 20, 1990, and a copy of [REDACTED] Employment Authorization Card, under Category A12, valid from August 1, 2003 to September 9, 2005.

Accordingly, the applicant, in this case, has established that he is eligible for late initial registration because he is the spouse of an alien granted TPS pursuant to 8 C.F.R. § 244.2(f)(2)(iv). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The record indicates that the grounds for the director's original denial had not been overcome. The Federal Bureau of Investigation fingerprint results report reveals the following:

- (1) On July 13, 2002, in Springdale, Arkansas, the applicant, under the name of Dimas Paen Guzman, was arrested for hindering apprehension or prosecution. The final court disposition of this arrest is not included in the record.
- (2) On January 26, 2006, in West Fork, Arkansas, the applicant was arrested for Count 1, failure to pay registration/license fee; Count 2, speeding; Count 3, driving with suspended/revoked license; and Count 5, improper window tinting. The final court disposition of this arrest is not included in the record.

The applicant has failed to provide the final court dispositions of his arrests (detailed in Nos. 1 and 2 above) as had been requested by the director on April 18, 2003. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The record contains a Warrant of Removal/Deportation, Form I-205, issued in Memphis, Tennessee, on September 22, 1998, based on the final order of removal by an immigration judge on September 8, 1998.

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.