U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: California Service Center Date: DEC 27 2006
[WAC 05 152 78739]

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:

[redacted]

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.

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 on appeal. The appeal will be dismissed.

The applicant is 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 an initial TPS application on July 10, 2002, under CIS receipt number SRC 02 235 54951. The director denied that application on March 4, 2003, because the applicant failed to respond, within 30 days, to a notice of intent to deny, issued on January 20, 2003, wherein the director requested that the applicant submit evidence to establish his continuous residence in the United States prior to February 13, 2001, his continuous physical presence from March 9, 2001, to the date of filing, and evidence of his identity and his nationality. The director, therefore, considered that application abandoned and denied the application. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen or reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 1, 2005, under CIS receipt number WAC 05 152 78739, and indicated that he was re-registering for TPS. The director denied the re-registration application, on March 16, 2006, 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, counsel alleges ineffective assistance of the applicant's prior representative. Counsel states that the applicant never received a request for evidence because the applicant was represented by another attorney, and that attorney did not provide the applicant with the request for evidence. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

With the appeal, in an attempt to establish the applicant's eligibility for TPS, counsel submits a copy of: an El Salvador birth certificate (in Spanish) with an English translation; an Arkansas Drivers License; affidavits from Jorge Solis, and Luis Pleites, both signed April 17, 2006, and both stating that the applicant has lived in the United States from September 2000 to present; a CIS fingerprint notification, dated March 1, 2005; Federal Individual Income Tax Returns, Form-1040; Arkansas Individual Full Year Resident tax returns; and W-2 forms, for the years 2003, 2004, and 2005.

However, 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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite period. It is noted that the applicant stated in his initial Form I-821, Application for Temporary Protected Status, and on his initial Form I-765, that he entered the United States on September 21, 2000. However, the applicant submitted the biographic page of his El Salvador passport that indicates that the passport was issued in San Salvador, on March 20, 2002. The discrepancy puts into question whether the applicant entered the United States in November 2000, as he claims. It is the applicant's responsibility to address inconsistencies between his application and his supporting documentation. 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 failed to submit any objective evidence to explain or justify the discrepancies in the entry date in the record and the issuance of his passport. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish his continuous residence and continuous physical presence in the United States during the requisite period. Therefore, the application will also be denied for these reasons.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with the applicant's subsequent TPS re-registration application, reflects that the applicant was arrested by the Police Department Rogers, Arkansas, on March 16, 2006, and charged with: Sexual Assault – 4th degree. The final court dispositions are not in the record of proceeding. CIS must address this arrest in any future proceedings.

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.