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DEC 27 2006

FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 203 70866]

IN RE:

Applicant:

APPLICATION:

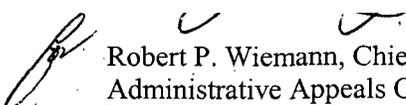
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 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 February 21, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 02 122 52289. The director denied that application on August 26, 2004, because the applicant was convicted of two misdemeanor offenses on November 25, 2003, in Huron, California; namely: (1) driving with .08 percent blood alcohol level or more, 23152(b) VC; and (2) unlicensed driver, 12500(a) VC. On September 29, 2004, the applicant filed an appeal from the denial decision. The AAO rejected the appeal on August 22, 2005, because the appeal was untimely filed (after the prescribed 33 days from the director's decision). The AAO also noted that the applicant had failed to submit the final court disposition of his arrest on February 15, 2000, in Fresno, California, for "PC 243E1 BATT OF NON-COHABITANT."

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 21, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on October 31, 2005, 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 asserts that all requested documents were not submitted since he never received the letter from CIS, that his address was never incorrect, and that he believes the United States Post Office "tried incorrectly to deliver my mail." He resubmits copies of court documents relating to his misdemeanor convictions listed above.

A review of the record indicates that the director's request for evidence dated April 30, 2004; the director's denial decision dated August 26, 2004; the AAO's decision dated August 22, 2005; and the director's denial decision dated October 31, 2005, were all mailed to the applicant's address [REDACTED] 93234). There is no evidence that the notices were returned to CIS as undeliverable. In fact, it is noted that the applicant responded to the director's notice dated April 30, 2004, and submitted the final court disposition of his arrests and convictions on November 25, 2003 (listed above).

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, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on April 21, 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). 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, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

It is noted that the record of proceeding contains insufficient evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will 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.