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FILE: [REDACTED]
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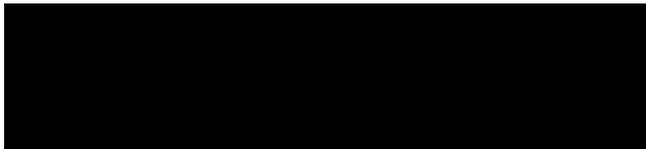
Office: CALIFORNIA SERVICE CENTER

Date: **JUL 25 2006**

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:



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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), 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 a first Form I-821, Application for Temporary Protected Status, with the Texas Service Center (TSC) on November 15, 2001, during the initial registration period (SRC 02 040 56006 relates). On December 6, 2004, that application was denied due to abandonment because the applicant failed to respond to requests for evidence, dated May 17, 2004, and August 26, 2004, to establish his nationality and identity. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed this Form I-821 on February 15, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The director of the CSC denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal. The applicant filed his appeal of that decision on August 24, 2005.

If the applicant is filing an application for 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. If the applicant is applying to renew his temporary treatment benefits, he must have a pending TPS application.

In this case, the applicant has not previously been granted TPS and he no longer has a pending application. Therefore, he is not eligible to re-register for TPS or to renew his temporary treatment benefits. 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 application for 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 Salvadorans was from March 9, 2001, through September 9, 2002. As previously discussed, the applicant filed the current application with Citizenship and Immigration Services (CIS) on February 15, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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).

CIS records reveal that the applicant was previously apprehended attempting to enter the United States without inspection on the following dates: December 4, 1998, near Eagle Pass, Texas; September 5, 1998, near Carrizo Springs, Texas; and December 4, 1999, near Sarita, Texas. At the time of each apprehension, the applicant claimed to be a citizen of Mexico, and was voluntarily returned to Mexico. The applicant was last apprehended on December 25, 2000, near Brownsville, Texas, accompanied by his claimed spouse, [REDACTED]. At that time, both claimed to be citizens of El Salvador. The applicant's spouse also filed an initial TPS application on November 15, 2001 (SRC 02 041 56266 relates). That application remains pending.

The regulations at 8 C.F.R. § 244.9 regarding the documentation required to establish identity and nationality state, in pertinent part, that: "[E]ach application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documentation, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. . . . Acceptable evidence in descending order of preference may consist of: (i) Passport; (ii) Birth certificate accompanied by photo-identification; and/or, (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint."

In support of his initial application that applicant submitted a photocopy of an abstract of an El Salvadoran birth certificate. On appeal, he also submits an un-translated photocopy of a marriage certificate.¹

The issue of the applicant's having claimed to be a citizen of Mexico on three separate occasions before CIS officials, and subsequently to have claimed El Salvadoran citizenship, has not been explained and calls into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

Based on a review of the record, it is concluded that the applicant has failed to submit sufficient evidence to establish that he satisfies any of the provisions for late initial registration under 8 C.F.R. § 244.2(f)(2). Furthermore, he has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1), or that he satisfies the **continuous** residence and **continuous** physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

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.

¹ Any document containing a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R § 103.2(b)(3).