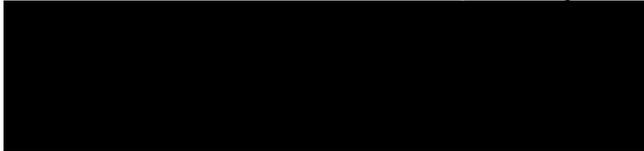




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



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JUN 02 2006

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 118 78150]

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.

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 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 a TPS application during the initial registration period on January 9, 2002 under CIS receipt number WAC 02 084 56392. The director denied that application for abandonment on July 28, 2004, because the applicant failed to appear for fingerprinting. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 26, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration 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, counsel for the applicant states that the applicant was wrongfully denied because the director thought that the applicant applied under asylum and not TPS.

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 Citizenship and Immigration Services (CIS) on January 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.

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).

On appeal, counsel for the applicant states that the applicant was wrongfully denied work authorization because the director indicated that he had applied for asylum and not TPS. Counsel also states that it appears to him that the initial TPS application had not been denied because the applicant never received the July 28, 2004 denial notice and because the applicant did receive work authorization.

Although the Service did issue a notice to the applicant on July 27, 2005 stating incorrectly that his employment authorization was based on an application for asylum, the applicant did not file an asylum application. However, the basis for the denial of the current TPS application was based on his failure to meet the qualifications for TPS, and not for asylum. Counsel also states that the applicant never received the earlier denial notice, and, had been granted employment authorization. The denial notice was sent to the applicant's address of record. There is nothing in the record to indicate that the notice was returned as undeliverable by the U. S. Postal Service. Furthermore, the applicant was granted employment authorization while his TPS application was pending. Once that application was denied, the applicant's employment authorization was also denied.

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). Therefore, the application also must be denied for this reason.

Beyond the director's decision, it is note that the applicant was subsequently fingerprinted, and the Federal Bureau of Investigation (FBI) Fingerprint Report indicates that the applicant was arrested on March 21, 2004

by the Grand Island Police Department for “Shoplifting” and “Obstructing Police.” CIS must address these arrests and any conviction(s) 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.