



U.S. Citizenship
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FILE: [Redacted]
[WAC 05 165 70796]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

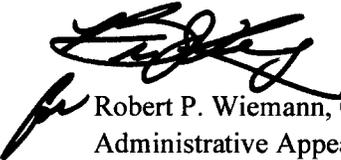
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

ADELA RUIZ
NORTHWEST IMMIGRANT RIGHTS PROJECT
P.O. BOX 270
GRANGER, WA 98932

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 (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 May 7, 2001 under CIS receipt number WAC 01 200 50718. The Director, California Service Center, denied that application for abandonment on March 2, 2004, because the applicant failed to respond to a request to provide court dispositions for his arrests and to submit evidence to establish his continuous residence in the United States. It is noted that evidence, including court documents, was received by CIS on March 5, 2004, subsequent to the issuance of the denial notice.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 14, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 23, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant indicates on appeal that he never had the opportunity to appeal the March 2, 2004 decision. A denial due to abandonment cannot be appealed, however, an applicant can submit a motion to reopen within 30 days of the denial decision. Counsel states that because the applicant did not receive notice of the denial of his initial TPS application, he was unaware that he did not qualify for re-registration. The notice requesting additional evidence and the March 2, 2004 denial notice were sent to the applicant's address of record, which the applicant maintained at the time he submitted the additional evidence.

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 parole; 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 March 14, 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 did not receive the March 2, 2004 decision and was therefore unaware that he did not qualify for re-registration. According to counsel, the applicant is eligible for late registration because he had a TPS application pending. Counsel states, “The late registration rules are specifically provided to allow persons an opportunity to register who **had some form of application submitted during the initial period.**” (Emphasis added). As stated, the March 2, 2004 decision was sent to the applicant’s last known address, and was not returned by the U.S. Postal Service as undeliverable.

Furthermore, contrary to counsel’s assertion, regulations do not provide that “some form of application” qualifies an applicant for late initial registration. As discussed above, Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, indicate that only applications for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal provide the applicant with eligibility for late initial registration. Moreover, taking counsel’s argument to its logical extreme, an alien who had abandoned his initial application could then

file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. However, the provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

The applicant, therefore, 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.

It is also noted that the court records provided by the applicant indicate that the applicant was convicted of "DUI Alcohol/Drugs"; "Drive w/o License" and "Hit and Run Resulting in Property Damage", all misdemeanors. Therefore, the applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a). It is also noted that a subsequent Federal Bureau of Investigations Fingerprint Report indicates the applicant was arrested on June 7, 2003 by the Salinas, California Sheriff's Office for "DUI Alcohol/Drug W/Priors". This charge must be addressed by CIS 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.