



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[WAC 05 203 77226]

Office: CALIFORNIA SERVICE CENTER

Date MAY 03 2006

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.

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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 200 51914. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in San Francisco, California, on February 11, 2002, and charged with conspiracy to commit a crime and petty theft of merchandise. On November 13, 2003, the applicant was requested to provide the final court disposition of his arrest. He was also requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was granted until February 10, 2004, to provide the requested evidence. The applicant's response to the notice was received at the California Service Center on December 16, 2003. In response to the notice, the applicant submitted additional evidence to establish his qualifying continuous residence and continuous physical presence during the requisite periods, but he failed to provide the final court disposition of his arrest in 2002. The director denied the application on December 28, 2003, because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

It is noted that the director denied the notice prior to the response deadline specified in the Notice of Intent to Deny dated November 13, 2003. On February 13, 2004, the California Service Center received a second response to the Notice of Intent to Deny dated November 13, 2003. Counsel for the applicant stated that the applicant experienced a delay in getting the results of a criminal record check from the Superior Court of California, County of San Francisco. Counsel submitted a document from the Superior Court of California, County of Los Angeles, stating that no criminal record was found [REDACTED] date of birth January 3, 1963.

However, the applicant's criminal record was discovered through an FBI fingerprint search. FBI records are regulated by law and furnished for official use only. It is the position of CIS that an FBI fingerprint search provides a more thorough account of an applicant's criminal background than local record searches conducted by name. Furthermore, this second response was received **after** the response deadline specified in the Notice of Intent to Deny. Additionally, counsel failed to file an appeal or a motion to reopen the denial decision.

Although the director issued the denial decision prior to the deadline specified in the Notice of Intent to Deny, the fact remains that the applicant's second response to the notice does not overcome the director's decision, nor does it establish the applicant's eligibility for TPS. Furthermore, as previously stated, counsel for the applicant failed to file an appeal or a motion to reopen the denial decision. Therefore, the director's denial decision will remain undisturbed.

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 or renewing his temporary treatment benefits.

The director denied the application on June 20, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew 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 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)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the *Federal Register*, or
 - (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. The record reveals that the applicant filed the current TPS 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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). The applicant has also failed to provide the final court disposition of his arrest. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application also must 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.