



U.S. Citizenship  
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 30 2006

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IN RE:

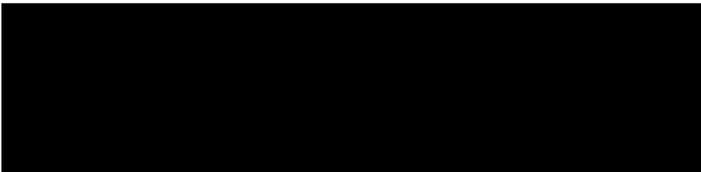
Applicant:



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 on appeal. The appeal will be dismissed.

The applicant is 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 under Citizenship and Immigration Services (CIS) receipt number WAC 01 230 50315. The District Director, San Francisco, California, denied that application on February 2, 2004, after determining that the applicant had abandoned his application based on his failure to appear for a scheduled interview on January 15, 2004. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 3, 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 asserts that the applicant is not precluded from receiving TPS benefits solely because his prior TPS application was denied based on abandonment. He further asserts that if an applicant timely applied for TPS benefits during the initial registration period, and timely re-registered during each re-registration period, an applicant is eligible to receive TPS benefits during any subsequent re-registration period.

These assertions of counsel are without merit. Based upon the initial filing of the Form I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility<sup>1</sup> for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS. Additionally, 8 C.F.R. § 244.9(c) states, in part:

Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

The record of proceeding indicates that on December 9, 2003, the applicant was requested to appear for a scheduled interview regarding his Application for Temporary Protected Status (Form I-821) and Application for Employment Authorization (Form I-765) at the Fresno, California, CIS office on January 15, 2004. The applicant failed to appear; therefore, the district director denied the TPS application based on abandonment on February 2, 2004. It is noted that the notice to appear for the interview and the district director's notice of denial were both mailed to the applicant's most recent address provided to CIS at that time (P.O. Box 612, Mendota, CA 93640). It is further noted that this address remains the applicant's present address. There is no evidence in the record that the notices were returned to CIS as undeliverable.

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<sup>1</sup> Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

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 February 3, 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 asserts that the applicant is eligible for late initial registration because his asylum application, filed on May 27, 1997, was pending during the initial registration period for El Salvadorans in 2001.

A review of the record of proceeding indicates that the applicant did file Form I-589, Application for Asylum and for Withholding of Deportation on May 27, 1997. That application was denied by an Immigration Judge on July 19, 2001, during the initial registration period. As provided in 8 C.F.R. § 244.2(g), the applicant must file an application for late registration with the appropriate Service director within a 60-day period immediately following the denial of the application for asylum or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The application, in this case, was not filed until February 3, 2005.

Accordingly, the applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application also must 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.