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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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NOV 02 2006
Date:

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

[WAC 06 157 70084]

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:

[Redacted]

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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number EAC 01 181 50518. The Director, Vermont Service Center, denied that application on August 8, 2002, due to abandonment, because the applicant failed to respond to the director's request for evidence.

The applicant filed a TPS application subsequent to the initial registration period under CIS receipt number WAC 05 162 83793. The director denied that application on September 30, 2006, because the applicant was not eligible for re-registration for TPS because the applicant's initial application had been denied.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 6, 2006.

The director denied the 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.

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 on that ground will be affirmed.

On appeal, counsel states that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration application. Counsel further states that the applicant qualifies for late registration because his spouse is currently eligible to be a TPS registrant, and was approved for TPS on January 19, 2002. To substantiate his claim, the applicant submitted a translated copy of his marriage license, his spouses Employment Authorization Card, and his spouses notice of approval for Temporary Protected Status.

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.

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).

The applicant has provided sufficient evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2).

It is noted that although the applicant qualifies to file his TPS application as a late initial registration under 8 C.F.R. § 244.2(f)(2), the record of proceedings shows that he has been convicted of two or more misdemeanors.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following offenses:

- (1) On May 30, 1995, the applicant was convicted of one count of possession of false government identification/driver's license (California Code § 529.5(A) misdemeanor) stemming from his arrest on May 25, 1995, in the state of California; and,
- (2) On August 23, 2002, the applicant was convicted of one count of speed in excess of 20 miles over the speed limit (Virginia Code §§ 46.2-862 and 46.2-868 misdemeanor) stemming from his arrest on July 19, 2002, in Virginia.

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the applicant's TPS application will be denied.

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.