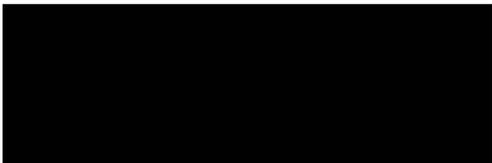


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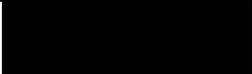
U.S. Citizenship
and Immigration
Services

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FILE:



[WAC 05 215 71792]

OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 17 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 claims to be 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 director denied the application because the applicant failed to establish he was eligible for late initial registration. The director also denied the application because the applicant failed to provide the final court disposition of his arrest in 1998.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (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.

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.
8 C.F.R. § 244.1.

The first issue in this proceeding is whether the applicant has provided the final court disposition of his arrest.

The record reveals that the applicant was arrested in Phoenix, Arizona, on November 27, 1998, and charged with one count of possession of narcotic drugs, a Class 4 felony, and one count of possession of drug paraphernalia, a Class 6 felony.

Pursuant to a letter dated February 16, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant, in response, submitted a City of Phoenix court record relating to unrelated motor vehicle violations; a photocopy of a letter dated January 26, 2001, from TASC, Inc., in Phoenix, Arizona, stating that the applicant had successfully completed the Maricopa County Attorney/TASC Drug Diversion Program on March 31, 2000; and, a photocopy of a TASC completion certificate dated January 26, 2001.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on April 13, 2006.

On appeal, the applicant submits a document from the Superior Court of the State of Arizona In and for the County of Maricopa indicating that the court dismissed the charges with prejudice on June 19, 2000, because the applicant successfully completed the required Maricopa County Attorney/TASC Drug Diversion Program.

This document alone is not sufficient to establish the final court disposition of the applicant's arrest on November 27, 1998. The applicant has not submitted a court document reflecting the applicant's plea to the felony drug charges or the court's order placing the applicant in a drug diversion program, nor has he provided a copy of the court's motion to dismiss the charges with prejudice.

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). Consequently, the director's decision to deny the application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant is eligible for late initial registration.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on May 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 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).

As stated above, the applicant was requested on February 16, 2006, to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, claimed that he qualifies for late initial registration because he had a pending asylum application. In support of his claim, the applicant submitted a partial photocopy of a Form I-221, Order to Show Case.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application.

On appeal, the applicant does provide any additional evidence to establish his eligibility for late initial registration.

The record reveals that the applicant filed an asylum application on November 2, 1993. The application was denied on June 30, 1995, and the applicant was referred for a removal hearing before an Immigration Judge. On August 26, 1996, an Immigration Judge in Los Angeles, California, denied the applicant's applications for asylum and for withholding of removal and ordered the applicant removed to El Salvador.

On September 16, 1996, the applicant filed a motion to reopen the removal proceeding with the Board of Immigration Appeals (BIA). The BIA dismissed the motion as untimely filed on September 30, 1998, four years prior to the initial registration period for Salvadorans. Since the applicant's removal proceeding was terminated by the BIA on September 30, 1998, the applicant cannot qualify for late initial registration based on a pending asylum application. He did not have a pending asylum application **during the initial registration period for Salvadorans.**

The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS for this reason will also be affirmed.

Beyond the decision of the director, it is noted that the applicant has also failed to submit sufficient evidence to establish his identity and nationality. 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

It is noted that the record contains an outstanding warrant of removal issued by the District Director, Los Angeles, California, on November 4, 1996.

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 TPS 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.