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FILE:

[REDACTED]
[WAC 04 122 50565]

OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 03 2006

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.

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 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 director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel for the applicant submits a brief and additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on February 12, 2004, for failure to appear to be fingerprinted or request that his fingerprint appointment be rescheduled. Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 24, 2004. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 21, 2001. The director denied that initial on February 12, 2004. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS 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.

The applicant filed a subsequent Form I-821 on March 24, 2004. The applicant indicated on the current Form I-821 that he was applying for re-registration. However, since the initial application was denied on February 12, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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.

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 current Form I-821 with Citizenship and Immigration Services (CIS) on March 24, 2004.

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 director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 25, 2004.

On appeal, counsel contends that the director erroneously denied the current TPS application. Counsel asserts that the applicant was not filing an initial TPS application, but rather a new TPS application “given the fact that his initial TPS [application] was denied based on abandonment.” Counsel asserts that the applicant qualifies for late initial registration because he filed the current Form I-821 within 60 days of the denial of his previous Form I-821.

As set forth at 8 C.F.R. § 103.2(b)(15), denial of an application due to abandonment does not preclude the filing of a new application or petition with a new fee. **However, the priority or processing date of an abandoned application may not be applied to a later application.** (Emphasis added.)

In this case, the applicant’s prior Form I-821 was denied on February 12, 2004 due to abandonment. As previously explained, any Form I-821 subsequently filed after a prior TPS application has been denied can only be considered as a late initial registration. Since the current application was not filed during the initial registration period for Salvadorans, the applicant must establish that he qualifies for late initial registration as described at 8 C.F.R. § 244.2(f)(2).

Counsel asserts that the applicant qualifies for late initial registration because he filed the current Form I-821 within 60 days of the denial of the prior TPS application.

While Temporary Protected Status may confer benefits that temporarily delay the alien’s removal, the temporary benefits of Temporary Protected Status do not equate to “relief from removal” obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation.

Taking counsel’s argument to its logical extreme, an alien who had abandoned his initial application could file a new application within 60 days after the denial for abandonment, abandon the new application, and perpetuate the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever successfully completing the application process. 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 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 has not submitted any evidence to establish that he has met any of the 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 will be affirmed.

It is noted that the applicant's 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Salinas, California, on May 18, 2003, and charged with driving under the influence of alcohol. This offense must be addressed in any further proceeding before CIS.

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.