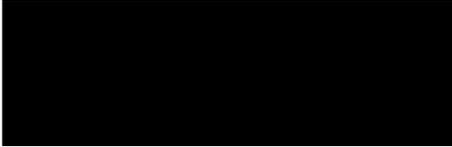


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

SEP 26 2006

[WAC 05 221 83828]

IN RE:

Applicant:

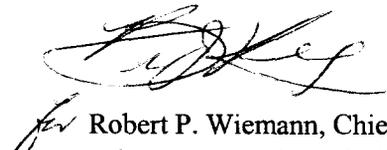


PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF PETITIONER: 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.


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 stated to be 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 an initial TPS application on April 27, 2001, under CIS receipt number SRC01 191 65358. The director denied that application on March 11, 2003, because the applicant failed to respond to a January 23, 2003 request to submit evidence to establish his eligibility for TPS within 30 days. The director, therefore, considered that application abandoned and denied the application. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record indicates that on March 12, 2003, the applicant submitted a response to the notice of intent to deny. In that response, the applicant submitted: 2 express mail receipts, one dated June 23, 2001, and the other dated November 2, 2001; a letter from the Social Security Administration dated September 5, 2001; a pay stub issued in April 2002; and an unclear Georgia picture identification card issued May 3, 2002.

The record does not reflect that the applicant filed a motion to reopen within the requisite period. It is noted that none of the evidence submitted by the applicant in response to the a notice of intent to deny satisfied the requirement that the applicant establish that he was physically present in the United States from March 9, 2001, to the date of filing the TPS application. All of the documents that the applicant submitted had dates after the TPS application was filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 9, 2005, under CIS receipt number WAC05 221 83828, and indicated that he was re-registering for TPS.

The director denied the re-registration application, filed on December 8, 2005, 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 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 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on May 9, 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 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, the applicant states that he filed an appeal in 2003, and subsequently he was issued an EAD card. With the appeal the applicant submitted a copy of an EAD card issued to him on November 12, 2003. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. 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). Therefore, the application also must be denied for this reason.

It is noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with the subsequent TPS re-registration application, reflects that: 1) the applicant was arrested by the Jonesboro,

Georgia sheriff's office, Jonesboro, GA, on March 5, 1999, and charged with "Disorderly Hse/Occpying dive/LST, Etc." The record indicates that the applicant was convicted of disorderly conduct, with a sentence of 14 days confinement. The record also indicates the applicant was arrested on December 11, 2005, by the Nashville Metro Police Department, Nashville, TN, and charged with driving without a license. The record does not indicate a conviction or other dispositions. The AAO notes that the final court dispositions are not in the record of proceeding. CIS must address these arrests and convictions in any future proceedings.

Beyond the decision of the director, the applicant has not submitted evidence of his nationality and identity. The applicant did not submit a copy of a photo ID or national identity card from his country of origin. The record contains an English translation of a birth certificate, purportedly the applicant's; however, a certified copy of the original birth certificate was not provided. In addition, the applicant has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the application must be denied for these additional 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.