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**U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

AUG 09 2007

[EAC 04 015 51405]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that he was eligible for late registration. The director also determined that the applicant failed to submit requested court documentation relating to his criminal record.

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

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on September 10, 2001, during the initial registration period (EAC 02 008 50840 relates). That application was denied on April 14, 2003, due to abandonment because the applicant failed to respond to a request to submit the fee for fingerprinting, required in connection with the application. 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 instant Form I-821 on September 18, 2003. While the director found the applicant ineligible for TPS, in part, because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-821 application was denied on April 14, 2003, the instant application cannot be considered as an application for annual re-registration. This Form I-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. As previously discussed, the record reveals that the applicant filed the instant Form I-821 on September 18, 2003, more than one year after the initial registration period had ended.

The record confirms that the applicant filed the current Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, the current Form I-821 cannot be considered as an application for annual re-registration. The current application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period. In this case, the applicant has not 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 Temporary Protected Status on this ground will be affirmed.

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 Citizenship and Immigration Services (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).

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.

In connection with his first Form I-821, the applicant indicated he had been "charged with marijuana use." In connection with the current Form I-821, the applicant indicated that he had been charged with a felony or two or more misdemeanor offenses.

On August 30, 2002, the director requested the applicant to submit evidence establishing his eligibility for late registration. The director also requested the applicant to submit evidence of his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, and the final court dispositions of any charges against him. In response, the applicant submitted evidence of his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The director determined that the applicant had failed to submit evidence to establish his eligibility for late registration, and had failed to provide the final court disposition of his having been charged with marijuana use. The director denied the application on July 30, 2004.

A review of the record reveals that, in support of his first Form I-821, the applicant had submitted documentation regarding the following offenses occurring in Queens County, New York:

1. The applicant was charged with violations of New York Penal Law (NY PL) sections 145.00 (Criminal Mischief in the Fourth Degree), 145.60 (Making Graffiti), 145.65 (Possession of Graffiti Instruments), 221.05 (Unlawful Possession of Marijuana), and 240.20 (Disorderly Conduct), to which he pled guilty, received conditional discharge, 5 days community service, and paid a surcharge. (Docket # [REDACTED]; Offense date August 9, 1996; Disposition date December 7, 1998.)
2. The applicant was charged with violations of NY PL sections 221.05 (Unlawful Possession of Marijuana), 221.10 (Criminal Possession of Marijuana in the Fifth Degree), and 240.20 (Disorderly Conduct), to which he pled guilty, and was sentenced to 10 days in jail. (Docket # [REDACTED] Offense date December 27, 1996; Disposition date December 7, 1998.)
3. The applicant pled guilty to Attempted Criminal Mischief, a misdemeanor, on January 26, 1999. (Docket # [REDACTED] Arrest # [REDACTED] Arrest date March 16, 1998; Disposition date August 9, 2001.)

In connection with an application for re-registration for TPS, filed on August 31, 2006, a Federal Bureau of Investigation (FBI) fingerprint results report also reveals the following:

4. The applicant was arrested in New York on May 16, 2002, and charged with violations of NY PL sections 221.10 (Criminal Possession of Marijuana in the Fifth Degree) and 221.05 (Unlawful Possession of Marijuana). The final court dispositions of these charges are not contained in the record.

Based on a review of the record, it appears that the applicant has submitted documentation concerning his having been charged with marijuana use, as detailed in Nos. 1 and 2, above. However, he has failed to submit the final court dispositions of the charges detailed in No. 4. Consequently, the director's decision to deny the application for failure to submit the final court dispositions of all of the charges against him will be affirmed. Furthermore, beyond the decision of the director, the applicant is ineligible for TPS due to his having been convicted of a felony or two or more misdemeanors, detailed in Nos. 1 through 3, above. 8 C.F.R. § 244.4(a). Therefore, the application must also 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.