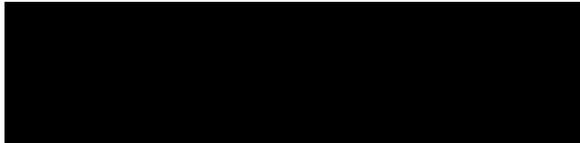




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



MI

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

AUG 27 2007

[WAC 05 207 87479]

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.

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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 record reveals that the applicant filed an initial TPS application on June 22, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 04 199 51139. The director denied that application on October 19, 2004, because the applicant did not submit any evidence to establish his qualifying continuous residence in the United States since February 13, 2001. The applicant did not file an appeal (Form I-290B) from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 25, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 27, 2006, because the applicant's initial TPS application had been denied and the applicant had not established *prima facie* eligibility for TPS re-registration.

On appeal, the applicant asserts that his initial application was never completed or supporting documentation submitted because the office where he applied never provided him with any documentation which established that a case had been filed on his behalf; nor did he receive any document from CIS confirming a case had been opened on his behalf. He asserts that each time he inquired about his case, the individual assisting him would inform him that CIS had not responded and that the case was pending. He states that he relied on this individual for the processing of his application; however, this individual moved his business address and he was unable to proceed or investigate as to whether or not a Form I-821 had been submitted to CIS. The applicant requests that his application, therefore, be reconsidered.

A review of the record of proceeding, however, shows that the director's decision denying the initial application dated October 19, 2004, was mailed to the address the applicant had provided at that time [REDACTED]. There is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notice was returned to CIS as undeliverable.

The applicant is filing the current TPS application as a re-registration; therefore, 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 applicant has not overcome the reasons for the initial denial. The applicant has submitted insufficient evidence to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application, as described in 8 C.F.R. § 244.2(b) and (c).

It is further noted, at this point, that the director failed to address the fact that the applicant filed his initial TPS application on June 22, 2004, after the initial registration period for El Salvadorans had closed.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 applicant's file contains a letter from Leticia Santiesteban-Lera requesting that her husband (the applicant) be included as her dependent in her TPS application. The marriage certificate, contained in the record, indicates that the applicant and [REDACTED] were married in El Salvador on July 27, 1998. While regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial

registration period had closed, these regulations do not relax the requirements for eligibility for TPS. A review of [REDACTED]'s file [REDACTED] reveals that [REDACTED] was granted TPS on October 25, 2004. [REDACTED] however, indicated on her initial TPS application and on her re-registration application (Forms I-821), and also on her Applications for Employment Authorization (Forms I-765) that she is "single." She also indicated on Part 3 of the Forms I-821: "N/A" under "Information about Your Spouse and Children," and "N/A" under "Date and Place of Present Marriage." While the applicant's record shows a marriage on July 27, 1998, it is not clear why [REDACTED] claimed that she is not married. Therefore, the authenticity of the marriage certificate furnished by the applicant is questioned. If in fact the applicant is married to [REDACTED] as claimed, the evidence of record failed to establish that the marriage between the applicant and [REDACTED] still exists. Also noteworthy is that [REDACTED] had indicated, throughout her application process, that she has been residing in the State of Georgia.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed 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 will 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.