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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 14 2007
[WAC 05 226 71053]

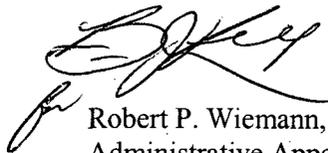
IN RE: Applicant: [REDACTED]

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, 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 record reveals that the applicant filed a TPS application during the initial registration period on June 7, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 207 54311. The Director, Vermont Service Center (VSC), denied that application on July 21, 2003, because the applicant had failed to respond to a request dated May 22, 2003, to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. Although the applicant was advised that he could appeal the VSC director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 14, 2005, and indicated that he was re-registering for TPS.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a Notice of Intent to Withdraw¹ was issued on September 1, 2005, requesting that the applicant submit the final court dispositions of all of his arrests, including the arrest listed on the FBI report. In response, the applicant submitted court records indicating that on August 18, 2004, in the Superior Court of California, County of Riverside, Case No. [REDACTED] (arrest date July 17, 2004), the applicant was convicted of "public intoxication," 647(f) PC, a misdemeanor, and that he was sentenced to a term of one day in the county jail. The record, in this case, shows that the applicant was convicted of only one misdemeanor offense; therefore, he does not fall within the provisions of section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

On February 21, 2006, the Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he never received any request for additional information or notification that his case was closed on July 21, 2003. A review of the record of proceeding indicates that the request for additional evidence dated May 22, 2003, and the VSC director's notice of decision to deny the application dated July 21, 2003, were both mailed to the applicant's most recent address 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 notices were returned to CIS as undeliverable.

The applicant filed 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.

¹ The applicant's initial TPS application was not approved, but, rather, it was denied on July 21, 2003; therefore, the director should have issued a Notice of Intent to Deny rather than a Notice of Intent to Withdraw.

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. Additionally, the FBI fingerprint results report reveals that the applicant had indicated that he was born in El Salvador, and that he is a citizen of the United States. Falsely claiming to be a United States citizen may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.

The record of proceeding contains a Warrant of Removal/Deportation, Form I-205, issued on May 19, 2006, based on the final order of removal by an immigration judge, and that the applicant failed to appear at the Imperial, California field office on June 23, 2006, for his enforced departure.

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.