



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

MI

[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: DEC 19 2007

[WAC 05 223 77005]

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 16, 2001, under CIS receipt number SRC 01 185 65810. The Director, Texas Service Center, denied that application for abandonment on February 27, 2002 because a request for evidence, dated February 11, 2002, was returned as undeliverable. The director noted that the request for evidence was mailed to the applicant's last known address. 8 C.F.R. § 103.2(b)(13). It is noted that the director had requested evidence to establish the applicant's continuous residence in the United States from February 13, 2001 and his continuous physical presence since March 1, 2001. 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 does not reflect that the applicant filed a motion to reopen or reconsider the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, under CIS receipt number WAC 05 223 77005, and indicated that he was re-registering for TPS. The director denied the re-registration application, on March 3, 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.

On appeal, counsel alleges ineffective assistance of the applicant's prior representative. Counsel states that the applicant's former representative failed to properly represent the applicant. However, counsel does not submit all of the required documentation to support an appeal based on ineffective assistance of a representative.

Any appeal or motion based upon a claim of ineffective assistance of a representative requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with respect to the actions to be taken and what representations were or were not made to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of the representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

Counsel also asserts the applicant is eligible for late initial registration because he had an application for relief from removal (his TPS application) pending during the initial registration period.

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.

Counsel further states that the applicant is eligible for late initial registration as the spouse of a TPS registrant. It is noted that the record reflects that the applicant is married to a TPS registrant, and is therefore, eligible for late initial registration. However, while the regulations may allow the spouse of an alien who is TPS eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS. With the appeal, counsel submits various documents, including tax returns, and receipts. However, the evidence of record does not establish the requisite continuous residence and continuous physical presence in the United States. For example, there is no evidence of record for the period from January 2001 through August 2001. Although the applicant submitted tax returns for the years 2000, and 2001, these returns are not supported by contemporaneous evidence, such as pay stubs for the period. It is reasonable to expect that the applicant would be able to submit corroborating evidence of his continuous residence and continuous physical presence; however, the applicant has failed to do so. For the foregoing reasons, the applicant has failed to establish his continuous residence and continuous physical presence in the United States during the requisite period. For this additional reason, the director's decision to deny TPS must be affirmed.

It is also noted that the record reveals that the applicant was apprehended on entry, on February 20, 1996, placed in Removal Proceedings (under [REDACTED]) and was ordered deported by the Immigration Judge to El Salvador on August 22, 1996.

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.