



U.S. Citizenship
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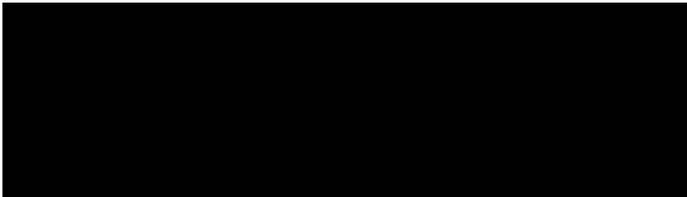
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FILE: [REDACTED] Office: California Service Center Date: FEB 23 2007
[WAC 05 225 81788]

IN RE: Applicant: [REDACTED]

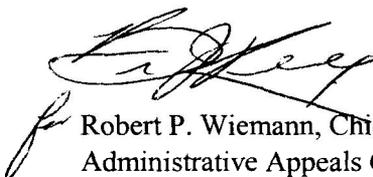
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF APPLICANT:



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. The matter is now before the Administrative Appeals Office (AAO) 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 August 20, 2001 under CIS receipt number SRC 01 267 54770. The Director, Texas Service Center, denied that application on April 30, 2003, because the applicant failed to respond to a January 22, 2003 request to submit a final court disposition for a charge of and arrest for Burglary of Vehicle on February 16, 1999 at Austin, Texas. The director noted that the applicant was given 90 days to submit the requested information. However, as of the date of the director's decision, the applicant had failed to respond to the director's request. 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.

It is noted that the record does not indicate that the applicant filed a prior motion to reopen or reconsider. However, the applicant submitted a motion to reopen, simultaneously with this appeal. On motion to reopen, the applicant reasserted his claim of eligibility for TPS. The AAO dismissed that motion to reopen in a separate decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, under CIS receipt number WAC 05 225 81788, and indicated that he was re-registering for TPS. 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.

The record reveals that with his initial TPS application, the applicant submitted photocopies of the following evidence: a State of Texas Identification Card that expired November 22, 2000; a State of Texas Driver License that expired November 22, 2000; a birth certificate, with an English translation; Two W-2, Wage and Tax Statements, for 1997 and 1998; and a State of Texas Certificate of Birth, issued on October 29, 1997. With his re-registration application, the applicant submitted photocopies of two Employment Authorization Cards which expired on September 9, 2002, and on September 9, 2003, and a Social Security Card.

On appeal, counsel asserts that the applicant is eligible for TPS because the applicant has not been convicted of two misdemeanors or 1 felony. With the appeal, in an attempt to establish the applicant's eligibility for TPS, counsel submits a court disposition for the arrest for Burglary of Vehicle on February 16, 1999 at Austin, Texas; an Affidavit signed by the applicant, dated April 15, 2006; 2 State of Texas Certificates of Birth, dated June 20, 2003, and September 20, 2005; tow documents in Spanish, without English translations, from [REDACTED] dated December 17, 2003, and December 8, 2003; and a business card, in Spanish, without an English translation.

As counsel points out, the court disposition indicates that the case was dismissed by the Criminal Court of Dallas County, on August 31, 2000, with no finding of guilt. Therefore, the issue on which the underlying decision was based, the applicant's failure to submit a court disposition, has been addressed or overcome on motion.

On appeal, counsel further asserts a negligent and unprofessional performance of the applicant's former representatives was the principal cause of the failure of the petition. Any appeal or motion based upon a claim of ineffective assistance of counsel 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 counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel 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 counsel'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). **The applicant submits an affidavit in support of his claim. However, the applicant has failed to submit evidence confirming that the former counsel has been notified of the incompetency claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.**

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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). In addition, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States from February 13, 2001, and his continuous physical presence since March 9, 2001. Therefore, the application will also be denied for these 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.