



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 226 70212]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2007

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 (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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 172 54377. The director denied that application on February 25, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001.

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 or renewing his temporary treatment benefits.

The director denied the application on August 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (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 initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on May 14, 2005.

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 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 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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is noted that the record reveals the following criminal offenses:

1. On March 15, 1997, the applicant was arrested in Norwalk, California, and charged with possession of a controlled substance in violation of section 11350(a) H&S, a felony. The record reveals that the applicant was placed in a drug diversion program for a period of 24 months. The applicant's drug diversion was terminated on November 6, 1997, and reinstated on November 10, 1997. The record contains no information as to whether the applicant ever successfully completed his drug diversion.
2. On August 8, 2004, the applicant was arrested in Norwalk, California, and charged with: driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor, and providing false identification to a peace officer in violation of section 148.9 PC, also a misdemeanor. On August 9, 2004, the applicant

was convicted on one charge of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. He was sentenced to 36 months probation and 30 days in the county jail.

3. On April 18, 2006, the applicant was arrested in Norwalk, California, and charged with: (1) driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor; (2) one count of hit and run with property damage in violation of section 20002(a) VC, a misdemeanor; and, (3) one count of providing false identification to a peace officer in violation of section 148.9 PC, a misdemeanor. On April 19, 2006, the applicant was convicted on Counts 1 and 2, both misdemeanors. Count 3 was dismissed due to plea negotiation.

The applicant is also ineligible for TPS due to his record of at least three misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

The record further reveals that an Immigration Judge in Lancaster, California, ordered the applicant removed to El Salvador on May 31, 2006. On June 21, 2006, the applicant was removed from the United States. Since the applicant departed the United States under an order of removal, he cannot establish continuous physical presence in the United States since March 9, 2001 as set forth at 8 C.F.R. § 244.2(b). A departure from the United States under an order of removal, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of removal proceedings does not constitute a brief, casual, and innocent absence from the United States. 8 C.F.R. § 244.1. Therefore, the application also must 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.