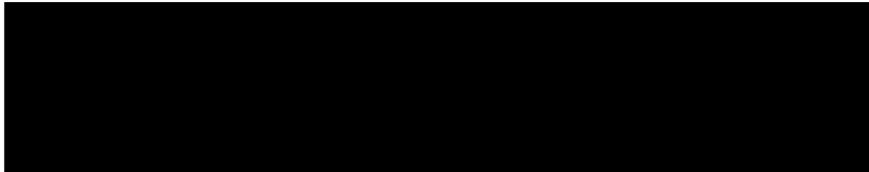


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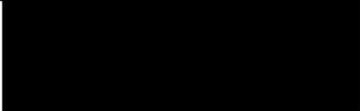
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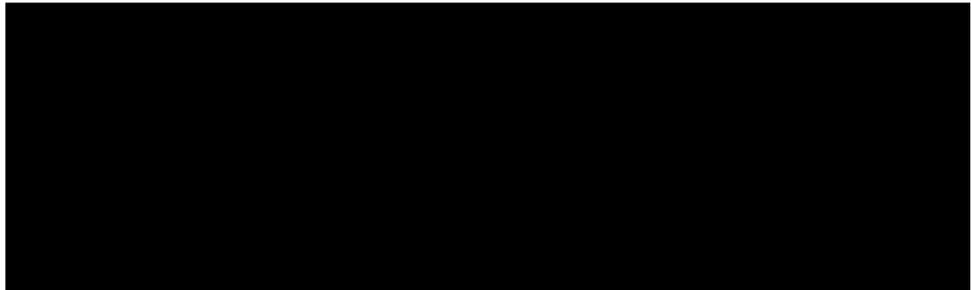
[WAC 05 208 85429]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 17 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 claims to be 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 indicates that the applicant filed a TPS application during the initial registration period on March 16, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 160 51281. The director denied that application on February 24, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on March 7, 2003. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, and indicated that he was re-registering for TPS.

The director 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 has been living in the United States for the past nine years, and he wishes to continue in the TPS program. He states that he is submitting proof of his physical presence in the United States "during the first 5 months of 2001 which are pay stubs from [REDACTED] place where I worked from 1998 to 2001."

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.

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) (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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on April 26, 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 or she 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 or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her 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.

However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

It is noted that the applicant was subsequently fingerprinted on June 17, 2006, based on his re-registration application. The Federal Bureau of Investigation (FBI) fingerprint results report indicates the following:

- (1) On January 7, 1998, the applicant (name used: [REDACTED] file number [REDACTED] was placed in removal proceedings in Los Angeles, California.
- (2) On March 7, 2004, in Los Angeles, California, the applicant (name used: [REDACTED] was arrested for driving under the influence of alcohol/drugs.
- (3) On November 10, 2004, in Burbank, California, the applicant (name used: [REDACTED] was arrested for petty theft.
- (4) On July 8, 2005, in Norwalk, California, the applicant (name used: [REDACTED] was arrested for trespass, injure property.

The final court dispositions of the above arrests are not included in the record of proceeding. CIS must address these arrests and/or convictions in any future decisions or proceedings.

The records of CIS and the applicant's files reflect the following:

- (a) The FBI report shows that the applicant was born in Guatemala on September 14, 1980, and that he is a citizen of Guatemala.

(b) File [REDACTED] contains Form I-213, Record of Deportable/Inadmissible Alien, indicating that on January 7, 1998, the applicant was apprehended at his place of employment, [REDACTED] in Woodland Hills, California. He claimed at that time that his name was [REDACTED] that he was born in Guatemala on July 19, 1977,<sup>1</sup> that he is a citizen of Guatemala, and that he had no authorization to legally work or reside in the United States. He was placed in removal proceedings, and on June 29, 1998, the immigration judge granted the applicant voluntary departure to Guatemala on or before August 28, 1998. The applicant failed to depart as required; therefore, a Warrant of Removal/Deportation was issued on January 11, 1999.

(c) File [REDACTED] also contains: (1) a copy of Form I-589, Application for Asylum and for Withholding of Removal, for [REDACTED] other names used: [REDACTED] [REDACTED] born on February 25, 1981; (2) a copy of a birth certificate indicating that [REDACTED] son of [REDACTED] and [REDACTED] was born in Guatemala on February 25, 1981; (3) a statement from the applicant's mother ([REDACTED] [REDACTED] indicating that she was born in Guatemala, and declaring that she is the mother of [REDACTED] a Guatemalan who currently resides in Los Angeles, California.

(d) The file of the applicant's brother was also reviewed (file number [REDACTED]. The record shows that [REDACTED] (the applicant's twin brother) was also apprehended (at the same time the applicant was apprehended [see paragraph (b) above]), at his place of employment, [REDACTED]. [REDACTED]'s file contains a copy of his birth certificate indicating that he was born in Guatemala on February 25, 1981, to [REDACTED] and [REDACTED].

(e) Both files [REDACTED] and [REDACTED] (Samuel/applicant) contain copies of a State of California Driver License issued to [REDACTED] and Form I-352, Immigration Bond, indicating that [REDACTED] is the obligor to an immigration bond posted on behalf of [REDACTED] and [REDACTED]. [REDACTED] indicated that he is the brother of [REDACTED] and [REDACTED].

File [REDACTED] contains a copy of a birth certificate indicating that [REDACTED] son of [REDACTED] and [REDACTED] was born in El Salvador on July 18, 1975. The authenticity of this birth certificate is questioned as the certificate appears to have been altered. It is also noted that the photographs and fingerprints contained in file [REDACTED] are similar to those contained in file [REDACTED]. 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). Additionally, the submission of a fraudulent birth certificate in an attempt to establish eligibility for TPS based on a claim that he is a Salvadoran national when in fact he is a Guatemalan national, may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act.

The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Guatemala is not a foreign state designated under section 244 of the Act. Based on the evidence of record, it is concluded that the applicant had not established that he is a native or citizen of El Salvador. Therefore, the application also must be denied for this reason.

<sup>1</sup> The Form I-213 was subsequently changed to reflect a new date of birth of September 14, 1980.

It is further noted that the record of proceeding does not contain a photo identification to establish the applicant's identity and nationality as required by 8 C.F.R. § 244.9(a)(1). 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.