



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

JAN 29 2007

Date:

[WAC 05 211 80968]

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:



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 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 his initial TPS application on August 13, 2001, under CIS receipt number SRC 01 257 56756. The Director, Texas Service Center (TSC), denied that application on August 28, 2002, because the applicant failed to submit the final court dispositions relating to this past arrests. On October 28, 2003, the applicant, through counsel, filed a motion to reopen with the TSC director. The TSC director reopened the case and requested the applicant to submit the final court dispositions of all his past arrests. The TSC director determined that the record did not contain a response from the applicant; and therefore, denied the application on September 27, 2004.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on April 29, 2005.

The director denied the instant application 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.

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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the instant application with Citizenship and Immigration Services (CIS) on April 29, 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).

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted with validity until September 9, 2007, upon the applicant's re-registration during the requisite time period.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

Although not addressed by the director, the record of proceedings contains the Federal Bureau of Investigation report reflecting the following:

- (1) On July 14, 1997, the applicant was arrested under the name of [REDACTED] (date of birth April 25, 1970) by the Arlington, Virginia Police Department and charged with "Unauthorized Use of Vehicle", "Driving Under the Influence", "Traffic Offense No D L", and "Hit and Run/Unattended";
- (2) On December 28, 1999, the applicant was arrested under the name of [REDACTED] by the Mecklenburg County Court Services and charged with "No Liability Insurance", and "Dr/Allow Veh Not Reg/Titled";

- (3) On October 22, 2000, the applicant was arrested under the name of [REDACTED] by the Mecklenburg County Sheriff's Office and charged with "Driving While Impaired", and;
- (4) On November 11, 2000, the applicant was arrested under the name of [REDACTED] by the Mecklenburg County Sheriff's Office and charged with "Driving While Impaired."

A review of the record of proceedings contains a record check from the Arlington County Police Department dated July 26, 2002, indicating no criminal arrest record for the name of [REDACTED]. In addition, the record contains a criminal record check dated April 25, 2002, from the Mecklenburg County Superior Court indicating no record for the name of [REDACTED]. However, as stated above in No. 1, the applicant was arrested under his alias of [REDACTED] and regarding Nos. 2, 3 and 4, the applicant was arrested under his aliases of [REDACTED] and [REDACTED].

CIS must address this arrest and/or conviction(s) in any future decisions or proceedings.

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.