



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



M1

FILE:



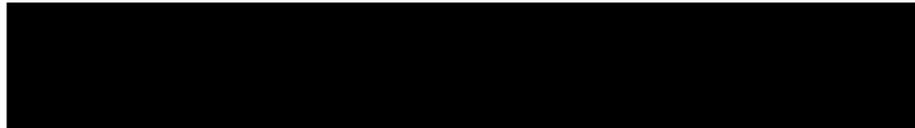
OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 29 2007

[WAC 05 228 72314]

IN RE:

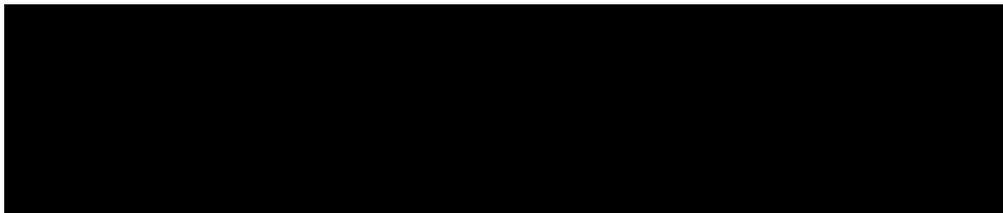
Applicant:



APPLICATION:

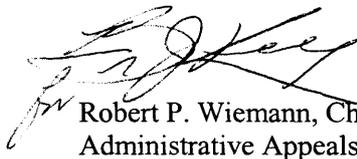
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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 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 reveals that the applicant filed a TPS application during the initial registration period on May 7, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 204 51769. The director denied that application on December 2, 2003, because the applicant had failed to submit requested: (1) police clearances from every city where she had resided since arriving in the United States; and (2) certified final court disposition of all of her arrests. On January 21, 2004, the applicant filed an appeal from the denial decision. The director rejected the appeal on March 15, 2004, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on March 13, 2006, 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, counsel asserts that the director's decision is incorrect and misleading because, although it is true that the case was initially denied on December 2, 2003, an appeal was filed and there has been no final order of denial.

Counsel's assertion on appeal is without merit. As noted above, the record indicates that the applicant's appeal from the denial of the initial application filed on January 21, 2004, was rejected by the director on March 15, 2004. Accordingly, as of March 15, 2004, the applicant had no pending TPS application.

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, she 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 May 16, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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). The record indicates that the grounds for the director's original denial had not been overcome. The Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested on January 7, 2000, in Norwalk, California, for transportation/selling narcotics between counties.

The applicant was requested on September 22, 2003, to submit police clearances from every city where she had resided since arriving in the United States, and certified final court disposition of all of her arrests. In response, the applicant submitted a Certificate of Search from the Los Angeles County Superior Court, East District, West Covina Courthouse, West Covina, California, indicating that no adult felony/misdemeanor record was found in the indexes of that court. The FBI report, however, indicates that the applicant was arrested in Norwalk, California. There is no evidence that the applicant's case was heard at the West Covina Court. Furthermore, the applicant has failed to submit the requested police clearances from every city where she had resided since arriving in the United States.

A conviction of transporting/selling (trafficking) a controlled substance may render the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. The applicant, however, has failed to provide the final court disposition of this arrest and of all other arrests, and police clearances from every city where she had resided, as had been requested by the director. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

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.