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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: California Service Center

Date:

JUL 05 2007

[WAC 05 229 72442]

IN RE:

Applicant:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. 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 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 July 9, 2001, under CIS receipt number EAC 01 225 59023 [under ██████████]. The Director, Vermont Service center, denied that application due to abandonment, on June 3, 2003, because the applicant failed to respond to a March 25, 2003 request to submit evidence to establish his eligibility for TPS. 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. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, May 17, 2005, under CIS receipt number WAC 05 229 72442, and indicated that he was filing an initial TPS application.

The Director, California Service Center, denied that application on April 20, 2006, because the applicant failed to establish eligibility for late initial registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (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 El Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on May 17, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or 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 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).

On appeal, the applicant reasserts eligibility for TPS, and states that he is eligible for late registration as the spouse of a TPS registrant. With the appeal, in an attempt to establish eligibility for late initial registration for TPS, the applicant submits a marriage certificate, which indicates that the applicant was married on December 6th 2004.

The first issue in this proceeding is whether the applicant is eligible 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. As noted above, the applicant's prior TPS application was denied. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

The next issue in this proceeding is whether the applicant is eligible for late initial registration.

As previously discussed, on appeal, the applicant asserts eligibility for late initial registration as the spouse of a TPS registrant, and states that he has been in the United States since 1994. However, the evidence of record does not establish the applicant's eligibility for late initial registration. While the regulations may allow the spouse of an alien who is TPS eligible to file an application after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS.

In order for an applicant to establish eligibility for late initial registration as the spouse of a TPS recipient, the marriage must have taken place before or within the initial registration period from March 9, 2001 to September 9, 2002. The applicant furnished evidence that his marriage took place on December 6, 2004. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS for this reason will be affirmed.

It is also noted that the record reveals that the applicant's application for political asylum was denied, and he was placed in Removal Proceedings, and ordered removed, on April 16, 1993, by the Immigration Judge.

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.