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U.S. Citizenship  
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 05 2007  
[WAC 05 152 77141]

IN RE: Applicant: [REDACTED]

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 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 August 16, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 283 57592. The director denied that application on December 29, 2003, because the applicant had failed to submit: (1) proof that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application; and (2) the final court disposition of his arrest on May 12, 1999. On February 19, 2004, the applicant filed a motion to reopen his case. The director dismissed the motion on March 10, 2004, because the motion was not filed within 30 days of the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 1, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on July 21, 2005, 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 states that he believes he never received the CIS letter requesting evidence although the address that appears on his EAD and TPS applications is the same. A review of the record indicates that the Notice of Intent to Deny (NOID) dated October 23, 2003, and the director's denial decision dated December 29, 2003, were mailed to the applicant at the address he provided [REDACTED]. There is no evidence that the notices were returned to CIS as undeliverable. In fact, the applicant responded to both the NOID and the director's denial decision.

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 alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 condition 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 March 1, 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 record indicates that on March 18, 1996, the applicant filed Form I-589, Application for Asylum and for Withholding of Deportation. In removal proceedings held on May 29, 1996, in Los Angeles, California, the applicant failed to appear; therefore, the Immigration Judge determined that any pending applications are considered abandoned and denied, and ordered the applicant deported to El Salvador *in absentia*. A Form I-205, Warrant Deportation (Removal), was issued on July 15, 1996. Accordingly, during the initial

registration period for El Salvadorans, the applicant had no pending application for asylum or any relief from removal that is pending or subject to further review or appeal.

The applicant has failed to establish that he has met any of the other criteria for late registration described in 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 fingerprint results report indicates that the applicant (name used: [REDACTED] was arrested on May 12, 1999, in Los Angeles, California, for battery on person, 243(a) PC. The applicant subsequently submitted a letter from the Superior Court of California, County of Los Angeles, indicating that after a thorough search of their record storage area and microfiche indexing, no record was found relating to [REDACTED]

It is noted that the only information used by the court to search their records is the applicant's name. There is no evidence that the arrest information, such as the date and place of arrest and offense, including the applicant's date of birth and other pertinent information, were used for the search. Additionally, at the time of the applicant's arrest, he used the name "[REDACTED]" The applicant failed to submit the court record under this name, or under any and all names used by the applicant. If the applicant was not prosecuted for this offense, such record should have been filed with the appropriate court and/or state or district attorney. Furthermore, there is no evidence that the applicant's case was heard at that court. It may be assumed that the applicant would have known where his case was heard.

The applicant has failed to provide the final court disposition of his arrest detailed above. Therefore, the application also must be denied for this reason.

Moreover, the director, in his initial denial, noted that the evidence furnished by the applicant was sufficient to establish that he had resided in the United States since February 13, 2001; however, no evidence was furnished to establish continuous physical presence from March 9, 2001, to the date of filing the application. 8 C.F.R. § 244.2(b). The applicant has not overcome this finding of the director. 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.