



U.S. Citizenship
and Immigration
Services

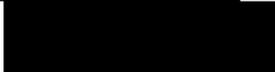
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FILE:



Office: California Service Center

Date: **MAR 07 2007**

[WAC 05 228 86433]

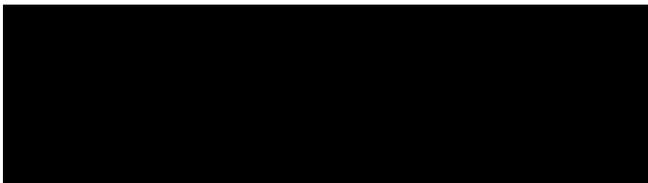
IN RE:

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.

A handwritten signature in cursive script, 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 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 an initial TPS application on April 12, 2001, under CIS receipt number WAC 01 184 57342. The Texas Service Center Director denied that application for abandonment, on April 2, 2004. The director noted that the applicant had failed to respond, within 30 days, to a January 30, 2004, notice of intent to deny to submit evidence to establish his continuous physical presence from March 9, 2001, to the date of filing his TPS application, and his nationality and identity. 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 indicate that the applicant filed a motion to reopen or reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, under CIS receipt number WAC 05 228 86433, and indicated that he was re-registering for TPS.

The Director, California Service Center, denied the re-registration application, on October 17, 2005, as the applicant's initial application had been denied and he was not eligible to apply for re-registration for TPS.

On appeal, counsel reasserts the applicant's eligibility for TPS as he has resided continuously in the United States since his arrival on March 7, 2000. Counsel states that the applicant was not aware that his TPS application had been denied as the applicant relied on a paid preparer to assist him with his initial TPS application process. With the appeal, in an attempt to establish eligibility for TPS counsel submits:

- A photocopy of an El Salvador birth certificate, with an English translation;
- A Declaration of [REDACTED] wherein he reasserts that he provided a paid preparer, a [REDACTED] with all of the documentation requested by the preparer to complete his initial TPS application; and,
- Copies of W-2 Wage and Tax Statements for 2000, 2001, 2002, 2003, and 2004.

On appeal, essentially, counsel alleges ineffective assistance of the applicant's prior representative. Counsel alleges the applicant's prior representative failed to submit requested documentation to establish the applicant's eligibility for TPS, to the applicant's detriment. However, counsel does not submit the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

It is noted that the notice of intent to withdraw was sent to the applicant at his last known address, and was not returned as undeliverable.

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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has furnished a copy of an El Salvador birth certificate and English translation; however, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for these reasons.

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.