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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

MAY 08 2007

[WAC 06 076 70050]

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:

[REDACTED]

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. It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the evidence submitted by the applicant failed to establish his eligibility for late TPS registration, his nationality and identity, his continuous residence and physical presence in the United States for the requisite time periods, and the final court dispositions of his various arrests.

On appeal, counsel asserts that the applicant meets all of the qualifications for TPS eligibility and submits some additional documentation.

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 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.

Persons applying for TPS who are El Salvadoran nationals must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on December 14, 2005 – more than three years after the close of the initial registration period for El Salvadoran nationals. To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above, and filed his TPS application within 60 days of the expiration of that condition, as prescribed in 8 C.F.R. § 244.2(g). The applicant asserts that he meets the condition described at 8 C.F.R. § 244.2(f)(2)(ii) because he has had a pending asylum request since 1993.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

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. *See* 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. *See* 8 C.F.R. § 244.9(b).

On April 27, 2006, the service center issued a Notice of Intent to Deny (NOID) in which it requested the applicant to submit evidence that he was eligible for late TPS registration; evidence of his nationality and identity; evidence of his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001; and evidence of the final court disposition(s) of an arrest in Dallas, Texas, on October 13, 1998, and all other arrests. On August 4, 2006, the director denied the application on the grounds that the evidence submitted in response to the NOID was insufficient to establish the applicant's eligibility for TPS on all of the foregoing criteria.

On appeal counsel contends that the applicant meets all of the requirements for TPS eligibility and submits some additional documentation. Based on the entire record, including the materials submitted on appeal, the AAO determines that the applicant has established his continuous physical presence in the United States since March 9, 2001, and his continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). The AAO also determines that the photocopy of the applicant's birth certificate, registered on his date of birth – December 3, 1967, and a personal photograph attached thereto, which accompanied the applicant's asylum application, establishes the applicant's identity and El Salvadoran nationality, in accordance with option (B) listed in the NOID. The record includes letters from the clerks of the county criminal courts and district criminal courts of Dallas County, Texas, dated October 10, 2005, and October 17, 2005, respectively, each bearing an official stamp, certifying that searches of the court indexes did not reveal any convictions of the applicant from the 1970s through October 2005. In view of the fact that all of the applicant's arrests of record occurred in Dallas County, Texas, the AAO concludes that the applicant has not been convicted of a felony or two or more misdemeanors committed in the United States as defined in 8 C.F.R. § 244.1.

Though the applicant has overcome the foregoing grounds for denial, the evidence of record still does not establish that he is eligible for late TPS registration. Since the initial registration period for TPS applicants from El Salvador expired on September 9, 2002, and the applicant's Form I-821 was not filed until December 14, 1995, the applicant must provide evidence that he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) and filed his TPS application within 60 days of the end of the qualifying condition, as prescribed in 8 C.F.R. § 244.2(g), to qualify for late registration. The record shows that the applicant filed an asylum application (Form I-589) on October 15, 1993, which is a qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Citizenship and Immigration Services (CIS) records indicate that on April 15, 2005, the applicant was sent a notice to appear for an interview on May 6, 2005, at the CIS Asylum Office in Houston, Texas. The applicant failed to appear for the interview, however, after which the asylum request was denied and the case closed on May 25, 2005, thereby terminating the qualifying condition. To meet the 60-day deadline for late TPS filing prescribed in 8 C.F.R. § 244.2(g), the applicant had to file his Form I-821 application no later than Monday, July 25, 2005. The applicant did not meet this deadline, since his application for TPS was not filed until December 14, 2005.

Accordingly, the director's denial of the application will be affirmed on the ground that the applicant failed to establish his eligibility for late TPS registration.

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 that burden.

**ORDER:** The appeal is dismissed.