U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: Vermont Service Center DATE: NOV 1 9 2007

[EAC 07 002 71479 –
as it relates to WAC 01 287 51658
and WAC 05 218 74393]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). A re-registration application was also denied by the Director, CSC. A subsequent late initial application was denied by the Director, Vermont Service Center (VSC), and is currently on appeal before the AAO. The case will be remanded to the VSC Director for further action.

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 current application was denied by the director on the ground that the applicant failed to establish that he was eligible for late TPS registration.

On appeal, counsel asserts that the applicant is eligible for late TPS registration because he was in removal proceedings during the initial registration period.

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.

El Salvadoran nationals applying for TPS 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid through March 9, 2009, upon the applicant's re-registration during the requisite time period.

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 Citizenship and Immigration Services (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).

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, at the California Service Center (CSC) on August 20, 2001 [WAC 01 287 51658] – during the initial registration period for El Salvadoran nationals. On August 3, 2004, the CSC Director denied the application on the ground of abandonment after the applicant failed to appear at the CIS office in El Monte, California, for fingerprinting during the requisite time period, or to request a rescheduling. On March 7, 2005, the applicant filed another Form I-821 at the CSC [WAC 05 218 74393], which he identified as an application for re-registration of TPS. On June 28, 2005, the CSC Director denied the re-registration application on the ground that the initial application had been denied, thereby making the applicant ineligible to re-register for TPS. The applicant filed an appeal, but it was dismissed by the AAO on July 20, 2006.

The current Form I-821 was filed by the applicant at the VSC on September 1, 2006 [EAC 07 002 71479], and identified as a late initial registration. It was denied by the VSC Director on March 12, 2007, on the ground that the applicant failed to establish that he was eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2).

Counsel filed a timely appeal, contending that the applicant is eligible for late TPS registration because he had an asylum application on appeal before the Board of Immigration Appeals (BIA) during the initial registration period which was administratively closed by the BIA so that the applicant could file an application for TPS. The appeal is accompanied by additional documentation which includes photocopies of the applicant's El Salvadoran passport, issued by the Consulate General in Los Angeles, California, on April 14, 1999, and a series of tax

filings, earnings statements, insurance letters, utility bills, and other documents over the years 1994-2005 addressed to the applicant at his residence in Los Angeles, California.

The record shows that the applicant was fingerprinted during the adjudication of the re-registration application in 2005-06, which remedied the basis for the denial of the initial application. The investigation conducted by the Federal Bureau of Investigation (FBI) based on the applicant's fingerprints reveals that he was arrested by the Police Department in Beverly Hills, California on April 16, 1994; charged with two criminal offenses identified as (1) "GTA" and (2) giving false information to a police officer; and convicted by the Municipal Court of Beverly Hills of the second charge (section 148.9(a) of the California Penal Code, classified as a misdemeanor), for which he was sentenced to 24 months probation and six days in jail.

As prescribed in section 244(c)(2)(B)(i) of the Act, and 8 C.F.R. § 244.4(a), an alien is ineligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States. The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state that "[i]f the information on the record is used to disqualify an applicant," the applicant shall be provided "the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record." The record of proceeding in this case does not contain the court's charging documents and final dispositions for the applicant's arrest to establish whether he was, in fact, convicted of either charge listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the final court disposition(s) of all of his arrests.

The case will be remanded, therefore, so that the VSC Director may accord the applicant an opportunity to submit the court's final dispositions of all his arrests. The director shall then enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The VSC Director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and the entry of a new decision.