



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: SEP 04 2007

[incorporating [REDACTED]
[WAC 05 223 85878]

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.

for 

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 (AAO) 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 a late initial TPS application on April 16, 2004, under CIS receipt number SRC 04 138 53947. The director denied the application on August 19, 2004, because the applicant failed to establish that he was eligible for late initial registration for TPS. The record does not reflect that the applicant filed an appeal of that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, under CIS receipt number WAC 05 223 85878, and indicated that he was re-registering for TPS. The director denied the re-registration application on April 15, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, counsel re-asserts the applicant's eligibility for TPS, and the applicant states that he has been living in the United States since 1985, and had a pending NACARA application. With his appeal, counsel submits documentation in an attempt to establish the applicant's continuous residence and his continuous physical presence. Counsel does not submit documentation to establish the applicant's eligibility for late initial registration.

It is noted that the applicant was notified in a September 17, 2003 "Notice Regarding Dismissal of Application for Suspension of Deportation or Special Rule Cancellation of Removal" that he is ineligible to file a NACARA application and dismissed the application because the applicant appears to be subject to an outstanding final order of deportation or removal. There was no right to appeal that decision. On October 2, 2003, an "ABC Final Denial Letter (Applicant Subject to Final Order)" states that on January 23, 1998, the applicant was notified of the intent to deny his application for asylum and withholding of removal. He was given 30 days to offer evidence or argument in rebuttal. A rebuttal was not received within the 30-day period. The applicant's request for asylum was denied on September 18, 2003.

The applicant failed to file his TPS application within 60 days after he was notified that his asylum application had been denied. The initial TPS application was not filed with the Texas Service Center until April 16, 2004, over 6 months later.

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).

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 also noted that the record reveals that the applicant was apprehended by the Border Patrol near Hidalgo, Texas, on February 26, 1985, was placed in removal proceedings, and ordered removed, *in absentia*, from the United States by the Immigration Judge, on August 22, 1985.

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.