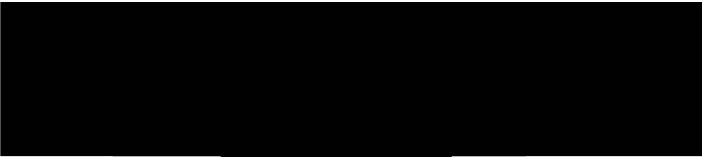


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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 04 2008

[WAC 95 264 69125]
[WAC 0627050189, motion]

INRE:

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: 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on motion. The motion 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 TPS application during the initial registration period under receipt number WAC 01 156 53067. The director denied that application for abandonment on April 21, 2003, because the applicant failed to respond to a request to submit evidence of her continuous residence and continuous physical presence during the requisite periods, and she failed to provide police clearances from every city in which she had lived since arriving in the United States and court documentation relating to her criminal record. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen within 30 days of the denial decision. The record does not reflect that the applicant submitted a motion within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 11, 2005, under receipt number WAC 05 274 70125, and indicated that she was re-registering for TPS.

The director denied the re-registration application on September 23, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant filed an untimely appeal under receipt number WAC 06 062 52184 on December 19, 2005. Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed at the California Service Center on or before October 26, 2005. The instructions to the Form I-290B, Notice of Appeal, very clearly dictate that the appeal is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent the appeal to the AAO. An appeal is not considered properly received until it is received by the service center that rendered the unfavorable decision. The untimely appeal was rejected by the CSC director on December 28, 2005. The applicant submitted a motion to reopen on September 11, 2006 which was also untimely filed.

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, she 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 applicant may apply for TPS during the initial registration period, or:

- (f) (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.

The initial registration period for El Salvador was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on July 11, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 applicant filed the current motion on September 11, 2006. The applicant submitted evidence of her nationality, and evidence of her continuous residence and continuous physical presence in the United States. In addition, she submitted a copy of a court document from the Superior Court of California, County of Los Angeles. However, the applicant did not submit any evidence to establish that she is eligible for late registration.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is noted that the applicant's Federal Bureau of Investigation (FBI) Fingerprint Results **Repo_refl** that she was arrested by the Police Department Los Angeles on October 22, 2000 (Agency Case _____ and charged with "Charge 1 - 001 Counts of Inf Corp Inj, Spouse/Cohab". In addition, the FBI report indicates "Pros Prefiling Deferral" for the charge. The applicant submitted a document from _____ ourt of California, County of Los Angeles, indicating that no records were found under the name _____ for an arrest on October 22, 2000 under Case number _____. However, there is no indication that the records of the Los Angeles court system were checked for a final court document under the various names used by the applicant.

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 motion is dismissed.