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

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FILE:

[REDACTED]
[WAC 05 800 35101]

OFFICE: Vermont Service Center

DATE: NOV 03 2008

IN RE:

Applicant: [REDACTED]

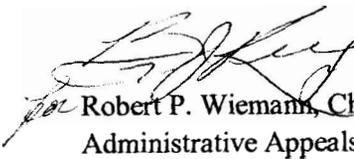
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.


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 claims 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 a TPS application during the initial registration period on April 17, 2001, under receipt number WAC 01 186 54518. The director denied that application due to abandonment on March 29, 2004, because the applicant failed to comply with the request for appearance to be fingerprinted. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 30 days of the date of issuance of the Notice of Decision. The record does not reflect that the applicant filed a motion within the allotted timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 2, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application 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 states on appeal that he did not appear at this scheduled fingerprint appointment because he received a notice indicating that he could disregard the appointment notice if his application had already been approved. He submits a copy of Form I-797 Fingerprint Notification requesting that he appear for fingerprinting on February 18, 2003 in connection with his Form I-821, Application for Temporary Protected Status. He also submitted a copy of a mailer transmitting his Form I-797D, Employment Authorization Document (EAD), which indicates that his Form I-765, Application for Employment Authorization, had been approved.

The fact that the applicant was issued an EAD is not evidence that he was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b).

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.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

It is noted that the applicant had submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001. The applicant, however, failed to establish his national identity.

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.