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U.S. Citizenship
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FILE:

Office: CALIFORNIA SERVICE CENTER

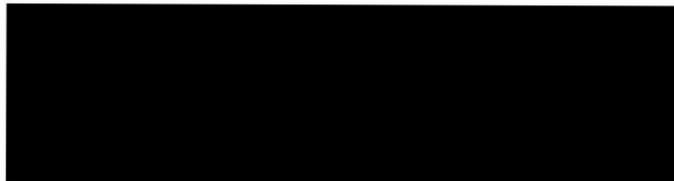
Date: **NOV 28 2008**

[WAC 06 152 50043, *appeal*]

[WAC 05 215 75350]

IN RE:

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

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 174 55636 during the initial registration period. The Director, Texas Service Center (TSC), denied that application on December 5, 2003, after determining that the applicant had failed to appear for her interview. A subsequent motion to reopen was denied by the TSC Director on January 26, 2004, because the applicant had not provided court dispositions for all of her past arrests. The TSC Director also noted that the applicant had been deported to Mexico in June 1999, and had indicated on her Form I-765, Application for Employment Authorization, that her last date of entry was June 20, 2001. The TSC Director then determined she had failed to maintain continuous presence.

The applicant filed the current Form I-821 on March 28, 2006, and indicated that she 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.

If an alien is filing a re-registration application, 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.

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.

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).

Furthermore, the applicant has provided insufficient evidence to establish her continuous residence and continuous physical presence during the required time period. 8 C.F.R. §§ 244.2 (b) and (c).

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. She has provided a copy of her birth certificate along with an English translation along with a copy of one page of a national identity document. However, a birth certificate and a copy of part of a national identity card alone do not establish nationality. The record does not contain any photo identification such as a passport or a complete national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

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.

On June 1, 2004, the applicant submitted court disposition documents for her arrest by the Roswell Police Department in Georgia, on September 27, 2001. On April 20, 2004, she was convicted of driving with no driver's license and of operating a motor vehicle with no proof of insurance by a Judge in the State Court of Fulton County, Georgia, both misdemeanors. Beyond the decision of the director, the applicant is ineligible for TPS because of these two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reflects that the applicant was deported to Mexico in June 1999.

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 cited 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.