



U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 27 2007

[WAC 05 203 77689]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant is 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 record indicates that the applicant filed a TPS application during the initial registration period on April 17, 2001, under receipt number WAC 01 187 52082. The director denied that application on September 30, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on April 2, 2004. There is no appeal from a denial due to abandonment; however, the applicant could have filed a motion to reopen within 30 days of the date of the denial notice. 8 C.F.R. § 103.2(b)(15). 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 April 21, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 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 appealed the director's decision to the AAO on September 8, 2005. The AAO reviewed the record of proceeding and determined that the applicant was not eligible to re-register for TPS because he had not previously been granted TPS, and, also, the applicant had not provided any evidence to establish that the application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the AAO affirmed the director's decision and dismissed the appeal on November 21, 2006.

A motion to reopen was filed on February 9, 2007. Counsel asserts that the director erroneously denied the TPS application because the applicant did appear for fingerprinting on September 25, 2004.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The record in this case shows that the AAO issued a decision dated November 21, 2006. Coupled with three days for mailing, the motion, in this case, should have been filed on or before December 26, 2006. The motion was received on February 9, 2007. The applicant neither addressed nor submitted any evidence to demonstrate that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

It is noted that the record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results reports dated September 25, 2004; May 27, 2005, and April 26, 2006, do not reflect a criminal record that would bar the applicant from receiving TPS. However, the

record of proceeding contains insufficient credible evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). The applicant submitted the following earnings statements:

- (1) Dated May 19, 2000, from Temptrak Corporation, Walnut, California. Name, address, Social Security Number, and marital status used by applicant: [REDACTED]
- (2) Dated June 22, 2000, from Temptrak Corporation, Walnut, California. Name, address, Social Security Number, and marital status used by applicant: [REDACTED]
- (3) Dated November 14, 2000; December 19, 2000; January 9, 2001; and July 31, 2001, from [REDACTED] Name, address, Social Security Number, and marital status used by applicant: [REDACTED] married; 6 exemptions.
- (4) Dated March 26, 2002, from [REDACTED] Name, address, Social Security Number, and marital status used by applicant: [REDACTED] married; 3 exemptions.

Based on the inconsistencies of the earnings statements, it appears that the applicant had submitted altered, fraudulent documents in an attempt to establish his residence and physical presence in the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Altered documents are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

Additionally, although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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 motion is dismissed. The decision of the AAO dated November 21, 2006, is affirmed.