



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 223 73257]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 28 2007

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:



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 Director, Texas Service Center, denied the initial application. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case 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 March 28, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 157 61014. The Director, Texas Service Center, denied that application for abandonment on October 5, 2004, because the applicant failed to appear for fingerprinting. However, the record of proceedings reveals that the applicant was subsequently fingerprinted in connection with her subsequent application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, 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.

On appeal, counsel for the applicant states that the director erred in denying the TPS application. The applicant also submits copies of previous employment authorization cards.

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 is not a current TPS registrant. 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 Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current application with CIS on May 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).

On appeal, counsel for the applicant states that the director erred in denying the applicant's TPS application. According to counsel, the applicant established by clear and convincing evidence that she is eligible for TPS. Counsel also states that the applicant had previously been granted employment authorization based on a grant of TPS. The applicant submits copies of previously issued employment authorization cards. According to counsel, the applicant's TPS application was approved because she received employment authorization. However, counsel incorrectly attributes the granting of employment authorization as approval of the applicant's TPS application. In fact, the applicant was granted employment authorization contingent on the approval of her TPS application. Once the TPS application was dismissed, the applicant was no longer eligible for this benefit. It is noted that the applicant was fingerprinted on June 14, 2005. However, the applicant failed to establish continuous physical presence in the United States from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for this reason.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) Fingerprint Report indicates that the applicant was arrested on March 27, 2002 by the Miami, Florida Police Department for "Petit Larceny, Theft Municipal Ordinance." It is also noted that a Federal Bureau of Investigation (FBI) Fingerprint Report indicates that the applicant was arrested on April 12, 2006 by the Miami, Florida Police

Department for "Nonmoving Traffic Viol- Driving License Suspended Knowingly 1st Offens." The final disposition for this arrest is not included in the record, nor were the final court dispositions requested be provided. In addition, the applicant has failed to declare on his applications that she has ever been arrested. CIS must address these arrests in any future proceedings. It is also noted that an immigration judge ordered the applicant removed to El Salvador on February 1, 2000.

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 appeal is dismissed.