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U.S. Citizenship
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Services

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JAN 25 2007

FILE:

[REDACTED]
[WAC 05 222 88253]

Office: CALIFORNIA SERVICE CENTER

Date:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 264 60510. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in San Francisco, California, on December 20, 1994, and charged with hit and run with property damage. On July 21, 2004, the applicant was requested to provide the final court dispositions of all arrests since his arrival in the United States. The applicant was granted until October 13, 2004, to provide the requested court document. The applicant, in response, stated in a letter dated October 12, 2004, that he had requested his criminal record from the California Department of Justice but had not received the requested documents. The applicant submitted a copy of a California Department of Justice Request for Live Scan Service dated September 15, 2004. The director denied that application on October 28, 2004, because the applicant failed to provide the final court disposition of his arrest on December 20, 1994.

On December 17, 2004, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that he did not receive the requested court document until October 28, 2004. The applicant provided a letter from the California Department of Justice dated October 26, 2004, along with the following court documents: (1) a record from the State of California Department of Justice, Bureau of Criminal Identification and (2) a record from the Municipal Court of the City and County of San Francisco, State of California, indicating that the applicant pled no contest on March 10, 1995, to one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. The original charge of hit and run with property damage in violation of section 20002(a) VC, a misdemeanor, was dismissed in the furtherance of justice.¹ The director rejected the appeal as untimely filed on January 24, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 10, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on August 12, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

¹ It is noted that the director correctly denied the applicant's initial TPS application because he found that the applicant had not provided the final court disposition of his arrest. The applicant did not provide the final court disposition document until he filed his appeal on December 17, 2004, more than two months after the deadline specified in the request for additional evidence and almost two months after the issuance of the denial decision.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the *Federal Register*, or
 - (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 Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on May 10, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

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). He has also failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as set forth at 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

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.