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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] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 02 2007
[WAC 05 215 80185]

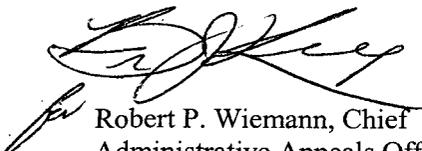
IN RE: Applicant: [REDACTED]

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 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, 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 record reveals that the applicant filed a TPS application during the initial registration period on April 30, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 188 50826. The director denied that application based on abandonment on May 10, 2004, because the applicant had failed to respond to a request dated March 30, 2004, to submit: (1) evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application; and (2) the final court disposition of his arrest on March 10, 2002. The applicant appealed the director's decision on June 23, 2004. The director rejected the appeal on July 28, 2004, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 3, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 13, 2005, 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, the applicant asserts that he was not aware that his TPS application was denied. He submits a copy of Form I-797C, issued by the California Service Center, and requests that he be sent Form I-589 in order to have all his paperwork in order.

It is noted that the director incorrectly stated on Form I-797C, Notice of Action, dated June 13, 2005, that the applicant's Form I-765, Application for Employment Authorization, filed on May 6, 2005, was based on a pending Form I-589, Request for Asylum in the United States, but that no record was found to establish that the applicant has a pending application for asylum; and that he was requested to submit Form I-589 within thirty days, but he had failed to submit an asylum application within the specified time period. The record, in this case, however, indicates that the applicant was applying for employment authorization based on his application for TPS rather than on an application for asylum.

Additionally, although the applicant indicated that he was not aware his TPS application was denied, a review of the record indicates that the request for additional evidence dated March 30, 2004, and the director's notice of decision to deny the application dated July 28, 2004, were both mailed to the applicant's address [REDACTED]. There is no evidence in the record that the notices were returned to CIS as undeliverable.

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.

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 3, 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 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).

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). Therefore, the application also must be denied for this reason.

However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The Federal Bureau of Investigation (FBI) fingerprint results report indicates the following:

- (1) On March 10, 2002, in Santa Ana, California, the applicant was arrested for Count 1, driving under the influence of alcohol/drugs; and Count 2, driving with .08 percent blood alcohol level or more. The final court disposition of this arrest is not contained in the record although the applicant was requested on March 30, 2004, to submit the final disposition of this arrest.
- (2) The record contains a Probation Violation Notice and a Probation Order from the Superior Court of California, County of Orange, North Judicial Center, dated August 5, 2002, indicating that the applicant violated the terms of his probation for the misdemeanor charges of Count 1, 23152(a) VC [driving under the influence of alcohol/drugs]; Count 2, 23152(b) VC [driving with .08 percent blood alcohol level or more]; and Count 3, 12500(a) VC [driving without a valid license]. It is not clear in the record whether these charges relate to No. (1) above, as the applicant also failed to submit the court disposition of these charges.

The applicant has failed to provide the final court disposition of his arrests detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). It is noted, however, that the FBI report indicates that the applicant was born in Estonia, and that he is a citizen of Estonia.

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.