



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 05 224 88502]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 06 2007

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 (AAO) on appeal. The appeal 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 under Citizenship and Immigration Services (CIS) receipt number WAC 01 244 52027. The record revealed that the applicant pled guilty on February 25, 1999, in the Municipal Court of Compton, Lynwood Judicial District, County of Los Angeles, State of California, to one count of possession of a narcotic controlled substance in violation of section 11350(a) H&S, a felony. The court deferred entry of judgment and ordered the applicant to complete an 18-month drug diversion program. The director denied that application on July 29, 2002, because he found the applicant had been convicted of a felony drug offense. On August 20, 2002, the applicant filed an appeal from the denial decision. The Director (now Chief) of the AAO dismissed the appeal on April 25, 2003, finding that the applicant had not overcome the basis for denial of the application. The Director also found the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act because he had been convicted of a violation of a state law relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 803.) After a review of the record, the Chief, AAO, concurs with the director's denial decision. On May 21, 2003, the applicant filed a motion to reopen his case. The service center director dismissed the motion on April 23, 2004, because motion did not meet the requirements for a motion to reopen or reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005.

The director denied the re-registration application on March 9, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal of 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.

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 applicant indicated on the current Form I-821 that he was applying for late initial registration, not for re-registration or renewal of temporary treatment benefits.

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 12, 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 record reveals that the applicant filed an asylum application on October 16, 1995. The asylum application was denied on September 7, 1999, and the applicant was referred for a removal hearing before an Immigration Judge. On October 15, 2001, an Immigration Judge in Los Angeles, California, administratively closed the proceeding to allow the applicant to apply for TPS.

In order to qualify for late initial registration based on a pending asylum application, the applicant was required to file his TPS application within 60 days of the termination of the removal proceeding. Since the applicant did not file the current TPS application until May 12, 2005, he cannot qualify for late initial registration on this basis.

The applicant has failed to provide any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is noted that the applicant's 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed the following additional arrests:

1. On October 4, 2003, the applicant was arrested in Norwalk, California, and charged with driving under the influence alcohol causing bodily injury.
2. On January 7, 2005, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol.
3. On November 20, 2005, the applicant was arrested in Long Beach, California, and charged with: (1) one count of driving under the influence of alcohol; (2) one count of driving with a suspended driver's license; and (3), one count of driving with under the influence of alcohol with a blood alcohol content of 0.08% or greater.

These offenses must be addressed in any further proceeding before CIS.

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.