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FILE:

[REDACTED]  
[WAC 04 073 51281]

Office: VERMONT SERVICE CENTER

Date: **DEC 05 2005**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal 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 director denied the application because the applicant failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish his identity and nationality.

On appeal, the applicant submits a statement and additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. The director denied that application on June 25, 2003, after determining that the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny dated April 25, 2003. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 8, 2004. The director denied this second application, in part, because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on August 16, 2001. The director denied that initial application on June 25, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS 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.

The applicant filed a subsequent Form I-821 on January 8, 2004. Since the initial application was denied on June 25, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals

that the applicant filed his current TPS application with Citizenship and Immigration Services (CIS) on January 8, 2004.

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 or his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his identity and nationality.

Pursuant to 8 C.F.R. § 244.9(a)(1), each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of: a passport, a birth certificate accompanied by photo identification; and/or, any national identity document from the alien's country of origin bearing the alien's photo and/or fingerprint.

The applicant stated on his Form I-821, Application for Temporary Protected Status, that he is a national and citizen of El Salvador. In support of his prior TPS application, the applicant submitted a photocopy of his Salvadoran birth certificate with English translation and a photocopy of his Salvadoran national identity document (cedula).

The director determined that the applicant had failed to establish his identity and nationality and denied the application on June 21, 2004.

On appeal, the applicant submits a photocopy of the biographic page of his Salvadoran passport, another photocopy of his Salvadoran birth certificate with English translation, and another photocopy of his nationality identity card (cedula) bearing his photo and fingerprints.

The applicant has submitted sufficient evidence to establish his identity and nationality, and this ground for denial of the application has been overcome.

The second issue in this proceeding is whether the applicant has established his eligibility for late initial registration.

The record confirms that the applicant filed his Form I-821 after the expiration of the initial registration period for Salvadorans. 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.

On April 5, 2004, the applicant was requested to submit evidence to establish his eligibility for late initial registration. In response, the applicant stated in a letter dated April 12, 2004, that he filed a prior Form I-821 with the Vermont Service Center during the initial registration period. He submits a photocopy of a Form I-797C notice acknowledging receipt of a Form I-821 from the applicant on August 16, 2001.

The director denied the application on June 21, 2004, because the applicant failed to establish his eligibility for late initial registration.

On appeal, the applicant submits evidence to establish his identity and nationality, but he does not submit any evidence to establish his eligibility for late initial registration.

The applicant has previously asserted that he did file a prior Form I-821 during the initial registration period for Salvadorans. However, as previously stated, the director denied the applicant's prior Form I-821 on June 25, 2003. The current Form I-821 was not filed with the Vermont Service Center until January 8, 2004, more than two years after the expiration of the initial registration period for Salvadorans.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status on this basis will be affirmed.

Beyond the decision of the director, the applicant has not provided sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report contained in the record of proceeding indicates that the applicant was arrested in Los Angeles, California, and charged with one count of "DUI ALCOHOL/DRUGS." The applicant has not provided the final court disposition of this arrest.

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.