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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 08 2005

[EAC 03 077 53761]

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:

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 (VSC), and is now before the Administrative Appeals Office (AAO) 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 that he was eligible for late registration.

On appeal, the applicant submits a brief statement and additional documentation.

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 properly filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on December 31, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

On May 14, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant responded by stating that during the initial registration period, by mistake, a photocopy of his TPS application, not the original, had been forwarded to the VSC. Once the applicant realized the error, he submitted the original application after the deadline for initial registration had expired.

The director determined that the applicant had failed to establish his eligibility for late registration and denied the application on July 10, 2003.

On appeal, the applicant submits the photocopy of his original application, indicating that it was received at the VSC on September 9, 2002. The record reflects that the photocopied application was rejected by the VSC as improperly filed (for not having been submitted with the correct fee) on January 14, 2003.

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

The applicant has submitted documentation in an attempt to establish that he, in fact, intended to properly file his TPS application within the initial registration period. However, the application he submitted was a photocopied document and did not include the proper fee. The applicant did not properly file an initial TPS application until

December 31, 2002, more than three months after the initial registration period had expired. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant indicated in Part 4 of his Form I-821, that he has never been "arrested, cited, charged, indicated, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations," However, information contained in the record indicates that the applicant has the following criminal history:

1. On July 9, 1987, he was arrested by the Police Department, Burbank, California, for "Grand Theft Auto." It appears that the charge was dismissed; however, the applicant was convicted and fined in the Municipal Court of Burbank for "Fight Noise Offensive Words," in violation of section 415 of the Penal Code. The actual court disposition of this arrest is not contained in the record.
2. On January 7, 1987, he was arrested by the Police Department, Los Angeles, California, for "ADW Other than Firearm or GBI Force." It appears that he was convicted in the Superior Court of Los Angeles of Inflict "Corporal Inj Spouse Cohab," in violation of section 273.5 A of the Penal Code. The actual court disposition of this arrest is not contained in the record.
3. On July 31, 1987, he was arrested by the Police Department, Los Angeles, California, for "Sell Furnish ETC Marij Hash." It appears that the applicant was detained and released for lack of probable cause/evidence.
4. On August 7, 1987, he was arrested by the Police Department, Los Angeles, California, for "Possess Marijuana Hashish For Sale." The actual court disposition of this arrest is not contained in the record.

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.