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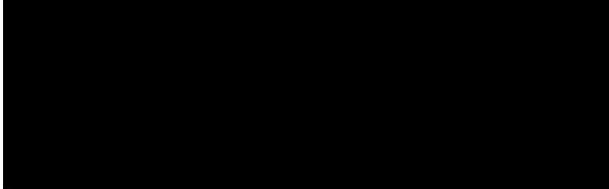
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OFFICE: VERMONT SERVICE CENTER

DATE **NOV 30 2005**

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. The application 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 he found that the applicant had failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish continuous physical presence in the United States since March 9, 2001. Finally, the director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record

On appeal, the applicant submits a statement and additional evidence. Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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. That application was denied on April 3, 2003, for failure to respond to a request for evidence to establish his eligibility for TPS. 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 November 26, 2003. 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, in part, because he had failed to establish his 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 February 22, 2002. The director denied that application on April 3, 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 November 26, 2003. Since the initial application was denied on April 3, 2003, the subsequent application cannot be considered as a re-registration. Therefore, the current TPS application can only be considered as a late initial 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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have

failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his current Form I-821 with Citizenship and Immigration Services (CIS) on November 26, 2003.

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 first issue in this proceeding is whether the applicant is eligible for late initial registration.

The record of proceedings confirms that the applicant filed his current TPS application after the initial registration period had closed. 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 March 15, 2004, the applicant was requested to submit evidence establishing his eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous physical presence in the United States. In response, the applicant submitted evidence of nationality and identity and documentation relating to his physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late initial registration and denied the application on July 15, 2004.

On appeal, the applicant does not make a statement or submit any evidence to establish his eligibility for late initial registration.

The applicant submits evidence relating to his criminal record. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous physical presence in the United States since March 9, 2001.

The applicant claimed on his Form I-821 that he first entered the United States on September 10, 1994.

As previously stated, the applicant was requested on March 15, 2004, to submit additional evidence to establish his qualifying continuous physical presence in the United States during the requisite period. In response, the applicant submitted the following:

1. a photocopy of his Virginia Identification Card issued on February 15, 2000;
2. a photocopy of the biographic page of his Salvadoran passport issued in Washington, D.C., on December 31, 1998; and,
3. photocopies of earnings statements from Eastern Applicators, Inc., issued between April 28, 2000 and April 26, 2001.

The applicant's Virginia Identification Card (No. 1 above), his Salvadoran passport (No. 2 above), and the earnings statements dated prior to February 13, 2001 (No. 3 above) are all dated prior to the requisite period to establish continuous physical presence in the United States. The applicant has submitted earnings statements from January through April 2001, but he has not provided any evidence to establish his qualifying

continuous physical presence in the United States from April 2001 to November 26, 2003, the filing date of his TPS application.

The applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States throughout the requisite period. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

The third issue in this proceeding is whether the applicant has failed to submit requested court documentation relating to his criminal record.

The Federal Bureau of Investigation (FBI) fingerprint results report contained in the record of proceeding reveals the following offenses:

1. On November 9, 1994, the applicant was arrested in Richmond, Virginia, and charged with "grand larceny auto."
2. On October 26, 1996, the applicant was arrested in Fairfax County, Virginia, and charged with "CONCEALED MERCHANDISE."
3. On July 25, 1999, the applicant was arrested in Fairfax County, Virginia, and charged with: (1) "ASSAULT & BATTERY - FAMILY MEMBER" and (2) "DESTRUCTION OF PROPERTY, MONUMENT." The FBI fingerprint results report indicates that the charge of "assault & battery on a family member" was dismissed on October 11, 2000, and the applicant was convicted of "destruction of private property."

On July 15, 2004, the director denied the application because the applicant failed to provide the final court dispositions of the offenses detailed in (2) and (3) above.

On appeal, the applicant provides the following:

4. a photocopy of a Commonwealth of Virginia Warrant of Arrest relating to his arrest on July 25, 1999, on the charge of assault and battery on a family member in violation of section 18.2-57.2, a Class 1 misdemeanor. According to this document, the applicant plead nolo contendere in the Fairfax County Juvenile and Domestic Relations District Court, Fairfax County, Virginia, of the charge. Adjudication/disposition was deferred for 12 months, and the case was dismissed on October 11, 2000, because the applicant had not been arrested again on the same charge and because he completed a domestic violence program. (Case No. [REDACTED] This document relates to No. 3 above.
5. a Commonwealth of Virginia Warrant of Arrest indicating that the applicant was arrested on October 26, 1996, and charged with stealing property valued at less than \$200 in violation of section 18.2-96, a Class 1 Misdemeanor. On April 8, 1997, the charge was dismissed in the Fairfax County General District Criminal Court, Fairfax County, Virginia. (Case No. [REDACTED] This document relates to No. 2 above.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

In No. 4 above, the applicant pled nolo contendere to the charge of assault and battery on a family member and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

The applicant has provided the final court disposition of No. 2. He has also provided the final court disposition of the charge of "assault & battery on a family member" as described in No. 3 above. However, the applicant has not provided the final court disposition of the charge of "destruction of private property" detailed in No. 3 above, nor has he provided the final court disposition for No. 1 above.

Although the record contains a document indicating that prosecution against the applicant on the charge of "Grand Larceny" was declined in the Circuit Court of Fairfax County, Fairfax County, Virginia, on May 21, 1996, there is nothing in this court document to relate this indictment on the charge of "grand larceny" to the applicant's arrest in Richmond, Virginia, on November 4, 1994, on the charge of "grand larceny auto."

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). Consequently, the director's decision to deny the application for this reason will also be affirmed.

Beyond the decision of the director, the applicant has failed to establish continuous residence in the United States since February 13, 2001 as described at 8 C.F.R. § 244.2(c). Therefore, the application also must be denied for this reason.

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.