



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 28 2006**
[WAC 05 154 76587]

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.

for 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 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 record reveals that the applicant filed an initial TPS application on March 11, 2004, after the initial registration period for El Salvadoran had closed, under Citizenship and Immigration Services (CIS) receipt number WAC 03 260 54383. The Director, Vermont Service Center (VSC), denied that application on December 9, 2004, because the applicant had failed to submit the final court disposition of her arrest. Although the applicant was advised that she could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

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

The Director, California Service Center, denied the re-registration application on September 23, 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 states that a separate brief will be filed within 30 days. To date, however, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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, she 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 March 3, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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).

A review of the record of proceeding indicates that on April 4, 1994, the applicant filed Form I-589, Request for Asylum in the United States. The asylum application was denied on April 14, 2000. During the initial registration period for El Salvadorans, on February 23, 2001, the applicant filed Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), as the spouse of an alien with a pending Form I-881. She furnished a copy of her marriage certificate indicating that the applicant married [REDACTED] on June 7, 2000, in Arlington, Virginia. On July 5, 2001, the Immigration Judge administratively closed removal proceedings based on the filing of the Form I-881.

The record does not contain evidence that any action has been taken on the applicant's Form I-881. It is noted that Part 3 of the Form I-821, initially filed on March 11, 2004, [REDACTED] as a "Prior Husband." Additionally, the re-registration Form I-821, filed on March 3, 2005, also listed, on Part 3, "NONE" on both blocks requesting the "Name of Spouse" and "Name of Prior Husband." It is further noted that CIS database shows that [REDACTED] is the principal of another alien spouse who is the beneficiary of his Form I-589 asylum application, and that this (present) spouse was scheduled for interview on October 18, 2004. The database also shows that this spouse filed Form I-881 as the dependent of Mr. Salgado on March 14, 2006.

Based on the information (noted above), it appears that the applicant was no longer the spouse of an alien with a pending Form I-881, when she filed her initial TPS application on March 11, 2004. Nor is there evidence in the record that the application for late registration was filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2) (listed above), in this case, after termination of her marriage to [REDACTED].

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

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors.

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.

The Federal Bureau of Investigation fingerprint results report indicates that on July 12, 1997, the applicant was arrested in Arlington, Virginia, for assault. The applicant was, therefore, requested on August 3, 2004, to submit the final court disposition of all arrests, including this arrest. In response, the applicant submitted a letter from the Clerk of the Circuit Court, Arlington County, Virginia, indicating that no record was found in the Circuit Court of Arlington County, and suggested that the applicant contact the Juvenile and Domestic Court of Arlington County or the General District Court of Arlington County. The applicant failed to submit any evidence that she contacted any of the two courts. Therefore, the Director, VSC, denied the initial application on December 9, 2004.

The applicant has failed to provide the final court disposition of her arrest as had been requested by the director. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). 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.