

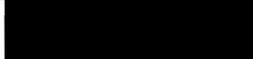


U.S. Citizenship
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Services

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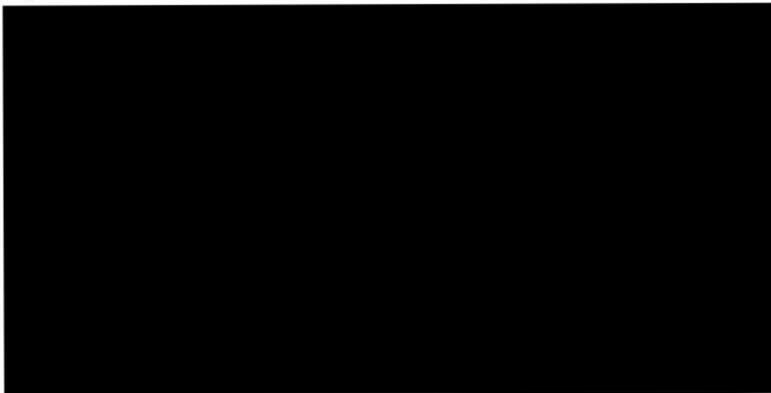
OFFICE: Vermont Service Center

DATE: DEC 01 2006

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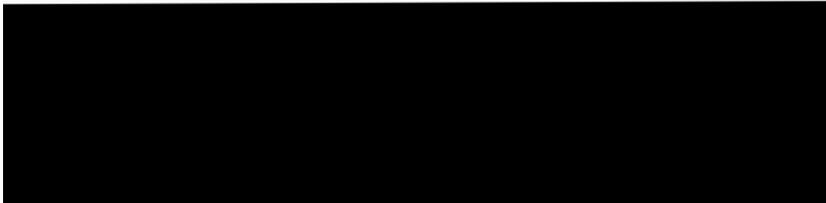
IN RE:

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:



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, Vermont Service Center. The application 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 instant application because the applicant failed to respond to a request for evidence to establish his eligibility for TPS late registration and his qualifying continuous residence and continuous physical presence in the United States. The applicant also failed to provide the final court dispositions of the charges relating to his criminal record. In addition, the director denied the application because the applicant failed to establish that he is a national or citizen of El Salvador. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, submits some evidence in support of applicant's eligibility for TPS.

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 [EAC 01 174 53430] for TPS during the initial registration period. That application was denied on November 4, 2002, because the applicant failed to provide information regarding his criminal history necessary for the adjudication of his application. The applicant could have filed a request for an appeal within 30 days from the date of the denial. The applicant did not file an appeal during the requisite timeframe.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on November 17, 2003. The director denied this application on September 1, 2004, 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. The applicant also failed to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant also failed to provide the final court dispositions of the charges relating to his criminal record. In addition, the director denied the application because the applicant failed to establish that he is a national or citizen of El Salvador. Since the applicant did properly file an application during the initial registration period, the director erred in his 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 April 9, 2001. That initial application was denied by the director on November 4, 2002. 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 17, 2003. Since the initial application was denied on November 4, 2002, 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 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.

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.
8 C.F.R. § 244:1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On March 17, 1985, the applicant was arrested and charged with “Assault with Deadly Weapon” by the Sheriff’s Office in Santa Cruz, California;

- (2) On December 21, 1985, the applicant was arrested and charged with "Assault with a Deadly Weapon", "Exhibit Deadly Weapon/Firearm", "Fight/Challenge Pub Place", and "Battery n Person" by the Sheriff's Office in Santa Cruz, California under the alias of [REDACTED]
- (3) On April 21, 1993, the applicant was arrested and charged with "Take Vehicle W/O Permission", and "Rec Stolen Property" by the Sheriff's Office in Santa Cruz, California;
- (4) On February 2, 1997, the applicant was arrested and charged with "Operating While Intoxicated – 1st Offense" by the Police Department of Perry, Iowa; and,
- (5) On February 14, 1997, the applicant was arrested and charged with "OWI – 1st" by the Sheriff's Office of Marshalltown, Iowa.

Pursuant to a letter dated June 21, 2004, the applicant was requested to submit the final court dispositions for the charges as detailed above. The applicant was also requested to submit evidence to establish his eligibility for TPS late registration and that he is a national or citizen of El Salvador. In addition, the applicant was requested to submit evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying time periods. The director determined that the applicant did not respond to the June 21, 2004 notice of intent to deny; therefore, the director denied the application because grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, states that the applicant responded to the director's notice of intent to deny. In addition, counsel requested additional time to locate complete copies of the documents which were previously submitted. Counsel also indicated on the appeal form that he would be sending a brief and/or evidence to the AAO within 30 days.

On November 8, 2004, counsel provided the following additional documentation in support of the applicant's appeal:

- (A) An affidavit from the applicant indicating that he did not receive the director's June 21, 2004 notice of intent to deny. The applicant also stated that he did not know that he needed to provide a certified disposition of his arrest on February 14, 1997. The applicant also states that he needs more time to obtain the additional records requested by the Service;
- (B) A copy of a Booking Sheet from the Santa Cruz County Sheriff-Coroner dated August 14, 2003, regarding the applicant's arrest on December 21, 1985;
- (C) A copy of a Booking Sheet from the Santa Cruz County Sheriff-Coroner dated August 14, 2003, regarding the applicant's arrest on April 21, 1993; and,
- (D) An uncertified copy of a Virginia Uniform Summons and court disposition regarding the applicant's arrest for "DWI" on June 20, 1998, by the Fairfax County Police.

The first issue is whether the applicant has established that he is a national of El Salvador.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

A review of the record of proceedings reflects that the applicant had previously provided copies of his El Salvadoran passport and birth certificate along with an English translation. The applicant has established that he is a national of El Salvador. Therefore, the director's decision on this issue will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed the instant application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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. A review of the record of proceedings reflects that 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 TPS late registration will be affirmed.

The third issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

On appeal, counsel did not provide any additional evidence in support of the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods. It is determined that the applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

The fourth issue in the proceedings concerns the charges relating to the applicant's criminal record.

On appeal, counsel provides copies of the final court disposition for the applicant's arrest by the Fairfax County Police Department on June 20, 1998, for "DWT". According to this court disposition, the applicant pleaded guilty and was charged with "Driving motor vehicle, engine, etc., while intoxicated, etc." (§ 18.2-266 of the Virginia Penal Code), a misdemeanor.

A review of the record reflects that the applicant has failed to provide the final court dispositions for his past arrests as detailed above in Nos. 1, 2, 3, 4, and 5 above. It appears that the applicant consistently avoids providing the requested final court dispositions for his past arrests. The applicant is also ineligible for temporary protected status because of his failure to provide the requested final court disposition information regarding his extensive arrest history. 8 C.F.R. § 244.9(a). Therefore, the director's decision to deny the application for TPS on this ground will also be affirmed.

It is also noted that applicant's asylum application was denied by an Immigration Judge on August 27, 1985, and a subsequent appeal to the Board of Immigration Appeals (BIA) was dismissed on March 21, 1989. It is further noted that the applicant was granted voluntary departure from the United States within 30 days of the final decision of the BIA as stated above.

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.