



U.S. Citizenship
and Immigration
Services

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DEC 07 2006

FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 221 88183]

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, 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 director denied the application because the applicant had failed to submit evidence to show that he was eligible for late initial registration.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on May 9, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 Citizenship and Immigration Services (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).

In a Notice of Intent to Deny dated February 27, 2006, 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 was also requested to submit (1) evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application, and (2) the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report. The applicant, in response, provided evidence to establish continuous residence and continuous physical presence in the United States, and the court disposition relating to his arrest on January 5, 2000.

The director determined that the applicant, in response, failed to submit any evidence to show that he was eligible for late registration and denied the application on May 2, 2006.

On appeal, the applicant asserts that he is eligible for TPS because he has been residing in the United States since prior to February 13, 2001, and also because he had applied for political asylum on February 17, 1990, and that the application is still pending.

A review of the record of proceeding indicates that on February 20, 1990, the applicant was interviewed regarding his application for asylum, Form I-589. The asylum application was subsequently denied by the Fresno Service Office in California on April 12, 1990. It is noted that the applicant, on appeal, furnished a copy of the Form I-589; the last page of that form indicates that the asylum application had been denied. Therefore, despite the applicant's assertion on appeal, the applicant has not established that he has an application for asylum, change of status, adjustment of status, voluntary departure, or any relief from removal that is pending or subject to further review or appeal.

The applicant has failed 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 TPS application will be affirmed.

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

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. 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 felony or misdemeanor.

The record reveals the following offenses:

- (1) The FBI report indicates that on June 23, 1994, in Reedley, California, the applicant (name used: [REDACTED]) was arrested for "false identification to a peace officer." The final court disposition of this arrest is not contained in the record, although the applicant was requested, on February 27, 2006, to submit the court dispositions of all of his arrests.

- (2) The FBI report indicates that on January 5, 2000, in Reedley, California, the applicant was arrested under a warrant for "false identification to a peace officer." The FBI report also indicates, "warrant arrest released on cite." The actual final court disposition of this arrest is not contained in the record, nor is there evidence in the record that this arrest relates to No. (1) above.
- (3) On January 28, 2000, in the Superior Court of California, County of Fresno, Reedley Division, Case No. [REDACTED] (arrest date January 5, 2000), the applicant was indicted for "driving when privilege suspended or revoked," VC 14601.1(a), a misdemeanor. The court subsequently granted the motion to reduce VC 14601.1(a) to an infraction, and on May 1, 2000, the applicant was convicted of the infraction. He was ordered to pay \$270 in fines and costs.

The applicant has failed to provide the final court dispositions of his arrests, detailed in Nos. (1) and (2) above. 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). Therefore, the application will also 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.