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[REDACTED]

MM

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 23 2006

[REDACTED] consolidated herein]  
[REDACTED] consolidated herein]

[EAC 05 054 50117]

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:

[REDACTED]

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, 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 determined that the applicant failed to establish that he met the qualification for late registration. The director, therefore, denied the application.

On appeal, counsel submits a statement and additional evidence.

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 on April 2, 2001 (EAC 01 167 52357). The director denied that application on April 9, 2002, after determining that the applicant had abandoned his application by failing to appear for fingerprinting. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on December 11, 2004. The director denied this second application 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 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 2, 2001. That initial application was denied by the director on April 9, 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 for 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 December 11, 2004. Since the initial application was denied on April 9, 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 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 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 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, 2006, 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 application on December 11, 2004.

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).

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. 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 director noted that the applicant's Application for Asylum and Withholding of Removal (Form I-589) [under file number ██████████] was denied on August 30, 2004, and that the applicant filed the current TPS on December 11, 2004, beyond sixty days from the date of termination of the qualifying condition described in 8 C.F.R. § 244.2(f)(2). *See* 8 C.F.R. § 244.2(g). The director, therefore, denied the application on April 1, 2005.

On appeal, counsel explains that the applicant filed his TPS application shortly after his application for political asylum was denied; however, the application was returned to him on October 19, 2004, because he did not appropriately fill out the Form I-821, and that the notice stated that he should resubmit his application prior to 60 days from the date of this notice. He submits a copy of this notice (Form I-797, Notice of Action). Counsel asserts that if CIS knew that the original 60 days would have passed on October 30, 2004 (60 days after the asylum application was denied), it should have stated that date as the deadline.

The Form I-797 shows that on October 19, 2004, the applicant was advised that Form I-765, Application for Employment Authorization, was being returned to him because he failed to file a completed Form I-821, Application for Temporary Protected Status. He was informed that in order to re-register for TPS, both Forms I-765 and I-821 must be submitted. The applicant was advised to resubmit the application within 60 days from the date of the notice.

As required by 8 C.F.R. § 244.6 and 8 C.F.R. § 244.17, initial applications and re-registrations must include both Forms I-765 and I-821. As indicated on the director's Notice of Action (Form I-797), the Form I-765 was received without the Form I-821 as required. Additionally, the applicant was informed that his "application has not been examined for legal sufficiency and/or required documentation."

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

The TPS application was properly received at the Vermont Service Center on December 11, 2004; therefore, the director's conclusion that the application was not filed within the 60-day period immediately following the expiration or termination of condition described in 8 C.F.R. § 244.2(f)(2), is affirmed.

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 application will be affirmed.

The Federal Bureau of Investigation fingerprint results report reflects the following:

- (1) The applicant was placed in removal proceedings in San Ysidro, California, on June 9, 1986, under file number [REDACTED]
- (2) The applicant was placed in removal proceedings in McAllen, Texas, on February 12, 1988, under the name of [REDACTED] file number [REDACTED]
- (3) The applicant was placed in removal proceedings in McAllen, Texas, on March 11, 1988, under the name of [REDACTED] file number [REDACTED]
- (4) The applicant was arrested in Yaphank, New York, on June 24, 2003, and charged with Count 1, operating a motor vehicle while under the influence of alcohol (.10 of one per centum or more by weight of alcohol in the person's blood), VTL 1192.2, a misdemeanor; and Count 2, driving while intoxicated, VTL 1192.3, a misdemeanor. The applicant submitted the records of the District Court of the County of Suffolk, First District Court, Central Islip, New York, indicating that Count 1 was reduced to VTL 1192.1, driving while ability impaired, and on September 10, 2003, the applicant entered a plea of guilty to the reduced charge of VTL 1192.1. He was placed on probation for a period of one year, fined \$500, and his license was suspended for a period of 90 days. Count 2 was dismissed. The record, in this case, shows that the applicant was convicted of only one misdemeanor offense; therefore, the applicant is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act.

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.