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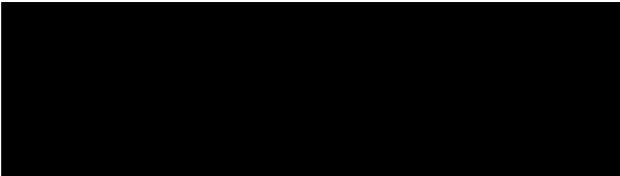
Office: CALIFORNIA SERVICE CENTER

Date: JUL 28 2006

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:



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 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 190 50515. The director denied that application on March 29, 2004, due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision. The applicant did not file a motion to reopen the case.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 6, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

On appeal, counsel for the applicant submits a statement.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (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 initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on April 6, 2005.

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.

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).

On appeal, counsel disagrees with the director's statement that the applicant is not eligible to apply for extension of his temporary treatment benefits because his initial TPS application was denied. Counsel states:

If an applicant timely applied for TPS during the initial registration period, and timely re-registered during each re-registration period, an applicant is eligible to receive TPS benefits during any subsequent re-registration period.

Counsel's contention is incorrect. Temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for Temporary Protected Status. 8 C.F.R. § 244.13(a). In this case, the applicant's initial TPS application was denied on March 29, 2004. The applicant's temporary treatment benefits terminated on that date.

The denial of an application due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of an abandoned application may not be applied to a later application. Denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application shall otherwise be material to the new application. 8 C.F.R. § 103.2(b)(15). In this case, as previously stated, the current application will be considered as a late initial application; however, the applicant must submit evidence to establish that he qualifies for late initial registration.

The record shows that the applicant filed a Form I-589, Request for Asylum in the United States, on October 31, 1994. On November 17, 1994, his application was denied and he was referred for a removal hearing before an Immigration Judge. On November 10, 1997, an Immigration Judge in San Francisco, California, found that the applicant had abandoned any application for relief from removal by failing to appear for his removal hearing. The judge ordered the applicant removed to El Salvador in absentia. Since the applicant's asylum proceeding terminated prior to the initial registration period for Salvadorans, he cannot qualify for late initial registration on the basis of a pending asylum application.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). The applicant has also failed to establish his qualifying continuous residence and continuous physical presence in the United States as described at 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

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.