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U.S. Citizenship
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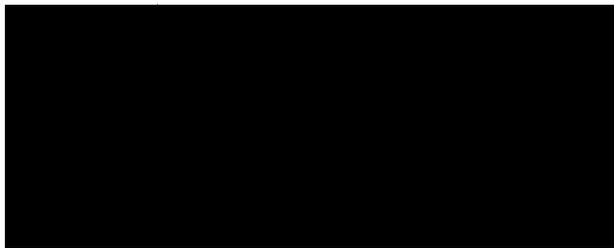
OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 215 70653]

IN RE:

Applicant:

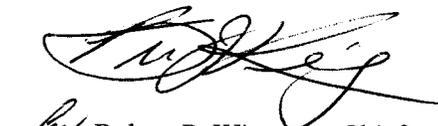


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The record reveals that the applicant filed a TPS application during the initial registration period on May 21, 2002, under receipt number WAC 02 197 52916. The director denied that application on August 19, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on July 13, 2002. The director also denied the applicant's motion to reopen, filed on April 28, 2004, because the motion was untimely filed.

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

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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, he 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 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.
- (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 shows that the applicant filed the current application with Citizenship and Immigration Services (CIS) on May 3, 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 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).

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). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record indicates that the applicant subsequently appeared for fingerprinting on or about June 14, 2005, based on his re-registration application. The Federal Bureau of Investigation (FBI) fingerprint results report indicates the following:

- (1) On June 19, 2000, in Anaheim, California, the applicant (name used: [REDACTED]) was arrested for petty theft. The final court disposition of this arrest is not contained in the record.
- (2) On June 20, 2000, in Santa Ana, California, the applicant (name used: [REDACTED]) was arrested for Count 1, theft; and Count 2, petty theft. The final court disposition of this arrest is not contained in the record.
- (3) On December 21, 2000, in Santa Ana, California, the applicant (name used: [REDACTED]) was arrested for Count 1, burglary; and Count 2, false ID to a peace officer. The FBI report shows that the applicant was subsequently convicted of burglary; however, the actual final court disposition of this offense is not contained in the record.
- (4) On April 17, 2001, in Anaheim, California, the applicant (name used: [REDACTED]) was arrested for theft of personal property/petty theft. The final court disposition of this arrest is not contained in the record.
- (5) On April 17, 2001, in Santa Ana, California, the applicant (name used: [REDACTED]) was arrested for Count 1, false ID to a peace officer; Count 2, petit theft, "spec circ;" Count 3, theft; and Count 4, petty theft. While the FBI report shows that the applicant was subsequently convicted of these offenses, the actual final court disposition of these offenses is not contained in the record.
- (6) On February 18, 2002, in Santa Ana, California, the applicant (name used: [REDACTED]) was arrested for Count 1, burglary; and Count 2, insufficient fund, check/etc. The FBI report shows that the applicant was subsequently convicted of "make etc. fictitious check etc;" however, the actual final court disposition of this arrest is not contained in the record.
- (7) The FBI report and documents contained in the applicant's CIS file [REDACTED] that the applicant was removed from the United States to Mexico on February 16, 2001, based on the applicant's entry into the United States without inspection on or about August 1997. On April 17, 2001, the applicant was encountered at the Anaheim Jail while being incarcerated based on his conviction of burglary, false ID to police, and petty theft. The applicant was again removed from the United States to Mexico on June 21, 2001.

The record indicates that the applicant had several arrests and/or convictions in California, as detailed in Nos. (1) through (7) above. However, the actual final court dispositions of the arrests are not included in the record of proceeding. CIS must address these arrests and/or convictions in any future decisions or proceedings.

Additionally, pursuant to section 212(a)(2)(A)(i)(I) of the Act, 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. Theft and burglary are found to be crimes involving moral turpitude, and convictions of these offenses may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

It is also noted that the FBI report and CIS records indicate that that the nationality the applicant claimed and/or established at the time he first came into contact with the Department of Homeland Security was that of Mexico, and he was twice removed from the United States to his claimed country of nationality, Mexico. Therefore, it appears that the applicant's "operative nationality" was not that of a TPS-designated country as held in *GENCO Op. 92-34* (August 7, 1992). See, also, *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983); *Chee Kin Jang v Reno*, 113 F. 3d 1074 (9th Cir. 1997).

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.