



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 03 058 53697]

Office: TEXAS SERVICE CENTER

Date: JUL 03 2006

IN RE:

Applicant: [REDACTED]

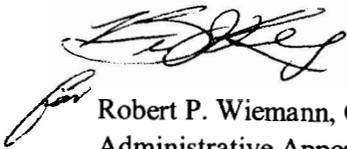
APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]
INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 failed to establish he was eligible for late registration.

On appeal, the applicant states:

I respectfully appeal the USCIS decision dated June 30, 2004. The decision to deny my TPS application was based on the filing I made November 10, 2002 being a late initial filing. The filing I made in November, 2002 was a renewal of the TPS filing that I initially made in 2001, file no: EAC 01 207 52048, EAC 01, 207, 51480 and EAC 01 207 52048. I am enclosing copies of receipt notices from my initial filing, which was received in June, 2001. When I received the Notice of Intent to Deny, I mailed a copy of my Cedula. Since I had already applied for TPS, I did not realize that I needed to submit any more information. Please re-consider your decision to deny my TPS.

I initialled [sic] filed for TPS on June 9, 2001. An attorney helped me fill out the forms. I enclose a copy of the receipt notice, Form I-797, that I received for Form I-821. I also received a fingerprint notification, that showed that I had paid all my fees. On July 12, 2001 INS issued an informational notice, to say that the payment was returned by the bank. I did not understand this, since I gave the attorney cash for the filing fees, and had the receipts. The notices said that they were informational only, and I thought that the attorney would pay the fees. Then, I received my employment authorization card, and so I thought that everything was taken care of and that I did not owe any money. Since I received my employment authorization card, I thought that I had been approved and had Temporary Protected Status. When I received the Notice of Intent to Deny, I thought that I had had Temporary Protected Status from July, 2001 and did not understand that I needed to submit that information. I submitted what I thought was being requested.

As stated in the regulations at 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 reflects that the applicant filed a Form I-821, Application for Temporary Protected Status during the initial registration period. That application was terminated on September 6, 2001 because of a "bounced check not corrected." An application that is terminated for abandonment cannot be appealed, however, the applicant could have filed a motion within 30 days of the denial. The applicant did not file a motion during the requisite timeframe. 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 20, 2002. Since the initial application was denied (terminated) on September 6, 2001, 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 is eligible for TPS 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 § 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

The record indicates that the applicant initially attempted to file a prior Form I-821, Application for Temporary Protected Status, with the Vermont Service Center on June 9, 2001 during the initial registration period. A financial institution rejected the check that was submitted with the applicant's initial application because there were insufficient funds in the account to cover it. As the applicant did not pay the application fee as required, his initial Form I-821 was terminated by the Vermont Service Center on September 6, 2001. The applicant did not file the current TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until November 20, 2002, more than two months after the expiration of the initial registration period for Salvadorans.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 30, 2004.

On appeal, counsel indicates that when the applicant applied for TPS in June 2001, he went to an attorney to file the forms and paid the attorney in cash. Counsel submits a copy of a receipt to the applicant from someone with an unreadable signature dated January 25, 2001 for \$300 to affirm this assertion. Counsel explains that on July 12, 2001, the Service Center sent the applicant an informational notice that the checks used for the filing fees had been returned by the bank. Counsel further explains that the notices went on to state that the person who had written the checks would receive an invoice, with payment instructions and that the applicant thought that the attorney who had helped him would receive the invoices and correct the error. Counsel indicates that when the applicant received the director's July 30, 2004 denial, he assumed that he did, in fact, have TPS and permission to work.

The record contains no evidence that the government ever received sufficient funds from the applicant to pay for his June 9, 2001 application. Nor does the record contain evidence that anyone officially represented the applicant or even helped him prepare his application when he attempted to apply during the initial registration period.

Counsel states that although the applicant received a Notice of Intent to Deny, he did not respond to the request for documentation of his eligibility for late initial filing because he thought he did not need to respond. Although the applicant did not think that he needed to submit evidence, that mistake does not excuse him from doing so.

The applicant's and counsel's statements are acknowledged; however, these statements do not mitigate the applicant's failure to file his Form I-821 within the initial registration period. Additionally, the record does not support counsel's assertion that the applicant was represented by an attorney when he attempted to file an application on June 9, 2001. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the record contains copies of the applicant's El Salvadorian national identity card. The card was issued to him in El Salvador on October 1, 2001. Therefore, he could not have been in continuous residence in the United States since February 13, 2001 until October 1, 2001, the date his card was issued to him abroad. Therefore, it is determined that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2 (b) and (c). Therefore, the application cannot be approved for these additional 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 TPS 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.