



U.S. Citizenship  
and Immigration  
Services

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FILE:

[WAC 05 222 85373]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 2006

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 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 EAC 02 157 50362. The Director of the Vermont Service Center denied that application on January 28, 2005, due to abandonment because the applicant failed to appear for his fingerprint appointment or request that his fingerprint appointment be re-scheduled. The director informed the applicant that there is no appeal from a denial due to abandonment, but he could file a motion to reopen the case within 33 days of the issuance date of the denial 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 May 10, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on August 23, 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.

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 May 10, 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).

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 during the requisite periods as described at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

It is noted that the applicant's 2005 Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. The applicant was arrested in New York, New York, on September 29, 2002, and charged with: 1) one count of criminal possession of a weapon in violation of PL 265.12, a felony; 2) menacing in the second degree in violation of PL 120.14, a misdemeanor; and, 3) harassment in the second degree in violation of PL 240.26, a violation. The fingerprint results report indicates that the applicant the applicant was convicted of criminal possession of a weapon in the fourth degree and sentenced to probation for a period of three years.

2. On January 17, 2003, the applicant was arrested in New York, New York, and charged with possession of marijuana in violation of PL 221.10, a misdemeanor.

These offenses must be addressed in any further proceeding before CIS.

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.