



U.S. Citizenship
and Immigration
Services

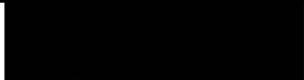
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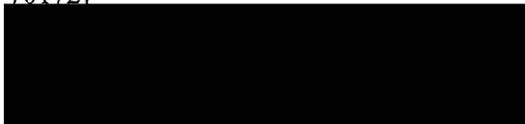
OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 26 2006

[WAC 05 165 70172]

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 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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 183 57214. The director denied that application based on abandonment on March 25, 2004, because the applicant had failed to respond to a request to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 14, 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.

On appeal, the applicant asserts that he was not issued a notice asking for additional evidence or denying his TPS application. A review of the record of proceeding indicates that the request for additional evidence dated January 15, 2004, and the director's notice of decision to deny the application dated March 25, 2004, were both mailed to the applicant's most recent address at that time.

There is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notices were returned to CIS as undeliverable.

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 may apply for TPS during the initial registration period, or:

- (f) (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 reveals that the applicant filed the current application with CIS on March 14, 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, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The record indicates the following arrests and/or convictions relating to the applicant:

- (1) On June 6, 2003, in Los Angeles, California, under Case No. [REDACTED] the applicant was arrested for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On June 9, 2003, in the Superior Court of California, County of Los Angeles, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to spend 10 days in the county jail, pay \$1,544 in fines and costs, enroll and successfully complete a 6-month first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Counts 1 and 3 were dismissed.
- (2) On September 7, 2004, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date May 1, 2004), the applicant was indicted for Count 1, driving with suspended license, 14601.1(a) VC, a misdemeanor; Count 2, driving with suspended-revoked license, 14601.5(a) VC, a misdemeanor; Count 3, unlicensed driver, 12500(a) VC, a misdemeanor; Count 4, avoid registration compliance, 4462.5 VC, a misdemeanor; and Count 5, no proof of car insurance, 16028(a) VC, an infraction. On January 3, 2005, the applicant was convicted of Count 3. He was placed on probation for a period of 24 months, and ordered to pay \$1039 in fines and costs. Counts 1, 2, 4, and 5 were dismissed.

The applicant was convicted of two misdemeanors, detailed in Nos. 1 and 2 above, and his convictions preclude a favorable finding of eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.