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MAY 08 2006

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 05 223 83506]

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: 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 (AAO) 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 record reveals that on May 8, 2001, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 01 204 54833. The Texas Service Center Director denied that application on March 21, 2003, because the applicant failed to establish his: 1) entry into the United States prior to February 13, 2001; 2) continuous residence in the United States since February 13, 2001; and, 3) continuous physical presence in the United States since March 9, 2001. It is noted that the director's decision states that on the Form I-821, Application for Temporary Protected Status, the applicant indicated his date of entry into the United States as "March 13, 1999." The director's statement is incorrect and will be withdrawn, as the applicant indicated on all of his TPS applications, and his applications for employment authorization, that he entered the United States on "November 15, 2000." The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated this was an application for re-registration or extension of TPS benefits.

The director denied this 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 states that he has been living in the United States since November 15, 2000. In support of the appeal, the applicant submits additional evidence consisting of: an affidavit from his mother attesting that the applicant resided with and was supported by her since November 15, 2000; money transfer receipts dated in May of 2001; a State of Georgia Certificate of Title dated June 12, 2002; medical documents dated in 2002; his El Salvadoran cedula; a lease document dated in 2002; an employee identification badge dated in 2001; and, his El Salvadoran passport issued by the Consulate General, Miami, Florida, on September 11, 2003. The applicant had previously submitted his State of Georgia Driver's License issued on December 1, 2001, and an employee document indicating his date of hire as November 2, 2001.

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 Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on May 11, 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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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). Although the applicant previously submitted an application for TPS during the initial registration period, any Form I-821, Application for Temporary Protected Status, 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. Because the initial application was denied on March 21, 2003, this subsequent application cannot be considered as a re-registration,

but only as an application for late registration. However, the applicant has not established his eligibility for late initial registration, and, therefore, this application must be denied for this reason.

The applicant failed to submit sufficient evidence to establish his date of entry into the United States prior to February 13, 2001, his continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The evidence in the applicant's name is dated as of May 2001. The affidavit from the applicant's mother attesting to his presence in the United States prior to May 2001 is not supported by corroborative evidence. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for this reason.

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.