

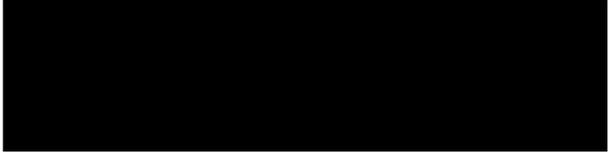
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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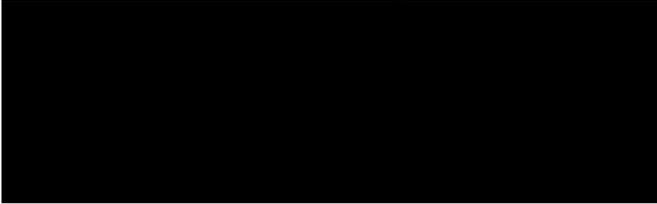
OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 08 2006

[WAC 06 060 70024]

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.

Cindy M. Gomez 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 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 had failed to submit sufficient evidence to establish eligibility for late registration.

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on November 29, 2005.

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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a Notice of Intent to Deny (NOID) dated May 11, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court dispositions of all of his arrests, including arrests listed in the Federal Bureau of Investigation (FBI) fingerprint results report. The applicant, in response, provided court documents relating to his arrests; however, the applicant neither addressed nor submitted any evidence to establish eligibility for late initial registration.

The director noted that the applicant did not provide all of the documentary evidence requested in the NOID, nor did he provide any evidence of eligibility for late registration as required by 8 C.F.R. § 244.2. The director further noted that USCIS records indicate that the applicant's asylum application was denied on March 3, 2005,

and that the TPS application was not filed within a 60-day period immediately following the expiration or termination of condition described in 8 C.F.R. § 244.2(f)(2). See 8 C.F.R. § 244.2(g). Therefore, the director denied the application on July 7, 2006.

On appeal, the applicant asserts that he did not receive a notice denying his asylum and requests that he be given the opportunity to submit any evidence that is required.

A review of the record of proceeding indicates that on November 9, 1988, the applicant filed Form I-589, Request for Asylum in the United States. On April 10, 1989, the Immigration Judge (IJ), Baltimore, Maryland, denied the application for asylum/withholding of deportation and the applicant was granted voluntary departure on or before April 20, 1989. Based on a motion to reopen filed by the applicant, the IJ reopened deportation [removal] proceedings. In removal proceedings held on November 6, 1989, the IJ again denied the application for asylum/withholding of deportation and the applicant was granted voluntary departure on or before December 6, 1989. USCIS records also indicate that on February 9, 2005, the applicant was requested to appear for an interview on March 3, 2005, regarding his application for asylum. Because the applicant failed to appear for the scheduled interview, the application was denied on March 3, 2005.

As determined by the director, and as provided in 8 C.F.R. § 244.2(g), the applicant is required to file a TPS application within a 60-day period immediately following the expiration or termination of a condition described in 8 C.F.R. § 244.2(f)(2); in this case, after the denial of the asylum application on March 3, 2005. The TPS application was not filed until November 29, 2005.

The applicant has failed 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 on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors committed in the United States.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

In a Notice of Intent to Deny dated May 11, 2006, the applicant was requested to submit the final court dispositions of all of his arrests, including arrests listed in the FBI fingerprint results report. The applicant, in response, provided court documents relating to some of his arrests, listed below. The director determined that the applicant had not provided all of the requested documents and denied the application on July 7, 2006.

The record reveals the following offenses:

- (1) On August 19, 2005, in Maryland, the applicant was arrested for "operating unregistered motor vehicle. On November 14, 2005, the District Court of Maryland (under Citation No. [REDACTED]) entered a *nolle prosequi* on the case.
- (2) On August 19, 2005, in Maryland, the applicant was arrested for "driving an uninsured vehicle." On November 14, 2005, the District Court of Maryland (under Citation No. [REDACTED]) entered a *nolle prosequi* on the case.
- (3) The FBI fingerprint results report shows that on August 19, 2005, in Rockville, Maryland, the applicant was arrested for "possession of a controlled dangerous substance." The applicant submitted a computer printout from the District Court of Maryland, under Case No. [REDACTED] indicating that on October 20, 2005, the applicant entered a plea of "OP," and the disposition of this arrest shows "STET." The applicant did not identify the codes for this disposition, nor is it clear whether the applicant was, in fact, convicted of this charge.
- (4) The FBI fingerprint results report shows that on October 6, 2002, the applicant (name used: [REDACTED]) was arrested in Washington, D.C., for Count 1, "AUCSA PWID COCAINE UNIFORM CONTROLLED SUBSTANCE ACT;" and Count 2, "POSS WITH INTENT TO DISTRIBUTE-COCAINE." The final court disposition of this arrest is not contained in the record, although the applicant was requested on May 11, 2006, to submit the court dispositions of all of his arrests.

Convictions of possession of a controlled dangerous substance and/or possession with intent to distribute cocaine may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) and/or section 212(a)(2)(C) of the Act. However, the applicant has failed to provide the final court disposition of his arrest detailed in No. 4 above, and the complete final disposition of his arrest, detailed in No. 3 above, from the court where the case was heard. Accordingly, the applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the application will 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.