U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: California Service Center Date: OCT 3 1 2006

[WAC 05 228 70075]

IN RE: Applicant: [redacted]

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

ON BEHALF OF PETITIONER: 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 stated to be 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 record reveals that the applicant filed an initial TPS application on May 21, 2002, under CIS receipt number SRC 02 130 54647. The director denied that application on July 22, 2004, because the applicant failed to respond to a request to submit a final court disposition pertaining to an arrest for battery and criminal trespass, on September 29, 2002, in Norcross, Georgia. The director noted that the applicant's response to the notice of intent did not contain the requested information. The director, therefore, considered that application abandoned. 8 C.F.R.§ 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen within the requisite period.

The record indicates that in response to the notice of intent, the applicant submitted a four-count accusation filed on December 12, 2002, by the State Clerk, Gwinnett County, Georgia, charging the applicant with one count of battery, two counts of simple battery, and one count of Criminal Trespass – Remain. However, the applicant did not submit a final court disposition for any of these charges.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 15, 2003, and indicated that she was re-registering for TPS.

The director denied the re-registration application, on May 25, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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, she 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 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on September 15, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 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).

On appeal, the applicant submits a copy of her initial TPS application, signed in March 2002, a money order receipt issued in March 2002, a CIS fingerprint notice dated March 21, 2002, a copy of a pre-natal letter from her doctor, issued in January 2001, and an untranslated copy of her national identification card. With the appeal, the applicant also submitted a final court disposition, issued on May 13, 2005, for the four-count accusation filed on December 12, 2002, by the State Clerk, Gwinnett County, Georgia, incident to an arrest for battery and criminal trespass, on September 29, 2002, in Norcross, Georgia. However, the evidence submitted does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

The AAO notes that the record contains final court disposition records showing a conviction, on October 28, 2003, on a negotiated nolo contendere plea of guilt, with a sentence of 11 months 27 days probation, 40 hours community service, and a $350.00 fine. CIS must address this conviction in any future proceeding.

It is also noted that on November 4, 1998, under file A76 137 092, the applicant was determined ineligible for admission to the United States under Section(s) 212(a)(6)(C)(i) and (7)(A)(i)(I) of the Act, by using a fraudulent passport and other letters in another person's name to try to enter the United States. The applicant was removed from the United States on November 5, 1998.

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.