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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 26 2006
[WAC 05 207 74177]

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.


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 record reveals that the applicant filed a TPS application during the initial registration period on May 9, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 213 56416. The director denied that application on August 3, 2004, because the applicant had failed to establish his qualifying continuous residence in the United States since February 1, 2001. On September 3, 2004, the applicant filed an appeal from the denial decision. That appeal will be addressed in a separate decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 25, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on August 16, 2005, 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 should not have been denied re-registration because his appeal from the denial of the initial application is pending. He submits documents previously furnished and contained in the record of proceeding.

As maintained by the applicant, an appeal from the denial of the initial TPS application was filed on September 3, 2004. During the pendency of the Notice of Appeal, the applicant filed the re-registration application on April 25, 2005, and the director denied the re-registration application on August 16, 2005. A remand of this case to the director based on premature denial of the re-registration application would not overcome the director's denial of the initial TPS application, because the record as presently constituted contains insufficient evidence to establish that the applicant has met the criteria for continuous residence and continuous physical presence in the United States during the requisite period. However, as addressed above, that appeal of the initial application was addressed in a separate decision.

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 April 25, 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). Therefore, the application also must 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.