



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: APR 03 2007

[WAC 06 089 50581 (appeal) & WAC 05 212 74547 (I-821)]

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 for temporary protected status was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO), on appeal. The appeal will be rejected.

The applicant is 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 9, 2001, under CIS receipt number WAC 01 202 51687. The director denied that application due to abandonment, on June 30, 2004, as the applicant failed to respond to a request for fingerprinting. 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 indicate that the applicant filed a motion to reopen or reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 14, 2005, under CIS receipt number WAC 05 212 74547, and indicated that he was re-registering for TPS.

The director denied the re-registration application, on December 20, 2005, as the applicant's initial application had been denied and he was not eligible to apply for re-registration for TPS.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial is dated December 20, 2005. Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). It is noted that although in the director's decision the applicant was instructed to submit the appeal to the CSC, and not directly to the AAO, the applicant initially mailed the appeal to the Administrative Appeals Office. The AAO received the Form I-290B on February 9, 2006, and returned the appeal and accompanying documents and fee, to the applicant, on the same day, with instructions to mail the appeal to the CSC. Coupled with three days for mailing, the appeal, in this case, should have been filed at the CSC on or before January 23, 2006. The appeal was properly received at the CSC on March 3, 2006.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested:-

1. On March 12, 2002, by the Sheriff's Office San Bernardino, California, and charged with:-
 - Charge 1: 1 COUNT OF Drive W/O License;
 - Charge 2: 1 COUNT OF DUI ALCOHOL/DRUGS W/PRIORS, and,
 - Charge 3: 1 COUNT OF DUI ALCOHOL/0.08 W/PRS
2. On November 11, 2002, by the Police Department Pomona, California, and charged with:-

- Charge 1: 1 COUNT OF DUI ALCOHOL/DRUGS;
 - Charge 2: 1 COUNT OF DUI ALCOHOL/0.08 PERCENT; and,
 - Charge 3: 1 COUNT OF Drive W/O License.
3. On April 20, 2005, by the Police Department Ontario, California, and charged with:-
- Charge 1: 1 COUNT OF WARRANT, DUI ALCOHOL/DRUGS W/PRIORS; and,
 - Charge 2: 1 COUNT OF WARRANT, DUI ALCOHOL/0.08 W/PRS.
4. On April 21, 2005, by the Police Department San Bernardino, California, and charged with:-
- Charge 1: 1 COUNT OF DUI ALCOHOL/0.08 W/PRS; and,
 - Charge 2: 1 COUNT OF FAIL T/APPEAR, WRIT PROMIS.

The AAO notes that the final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests and any convictions in any future proceedings.

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.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.