



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date:

APR 04 2007

[WAC 05 221 78777]

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:

[REDACTED]

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 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 February 4, 2002, under CIS receipt number EAC 02 109 51200. The director, Vermont Service Center, denied that application, on January 12, 2005, because the applicant failed to appear for fingerprinting as requested by the director. The director, therefore, considered the TPS 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.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 9, 2005, under CIS receipt number WAC 05 221 78777, and indicated that he was re-registering for TPS. The director, California Service Center, denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal applicant states that he is a national of El Salvador, entered the United States on January 10, 2001, and is eligible for TPS. He states also that he responded to all CIS requests. In an attempt to establish eligibility for TPS, the applicant submits copies of the following: a Change of Address Card, Form AR-11, dated February 17, 2005, with a cover letter; a CIS Case Status computer printout stating that the last written notice was returned as undeliverable on October 20, 2004; a birth certificate in Spanish, with an English translation; the biographic page of his El Salvador passport; a notarized personal reference letter, from [REDACTED] dated January 30, 2002, stating that he has known the applicant in the United States since January 12, 2001; a notarized personal reference letter, from [REDACTED] dated January 30, 2002 stating that he has know the applicant in the United States since January 12, 2001; a receipt, dated January 27, 2003; an envelope from Immigration and Naturalization Service, stamped April 10, 2002, addressed to the applicant in Hempstead, New York; 2 Guevara Express money transfer receipts, issued in February and April 2003; an Acknowledgement of Paternity for a child born June 23, 2004; 2 Consents for Treatment, Admission, and Diagnosis, dated June 23, 2004; a Social Security receipt letter, dated August 30, 2004; an unsigned Customer Account Application for Wells Fargo Bank, dated October 19, 2004; and 11 pay stubs, 3 issued in 2004, and 8 issued in 2005.

It is noted that although the applicant claims that he never received the initial denial, the record reveals that two fingerprinting requests dated February 24, 2004, and on September 2, 2004, respectively, as well as the denial notice were mailed to the applicant at his last known address, and the denial notice was also mailed to his attorney. This is the same address applicant's counsel provided by letter, dated September 26, 2003, when counsel requested rescheduling of a fingerprinting appointment.

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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States from February 13, 2001, and his continuous physical presence since March 9, 2001. Therefore, the application will also be denied for these reasons.

It is noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with his subsequent TPS re-registration application, reflects that the applicant was arrested on March 31, 2006, by the Police Department, Richardson, Texas, and charged with possession of marijuana < 2 oz. The final court dispositions are not in the record of proceeding. CIS must address this arrest in any future proceedings.

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.