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U.S. Citizenship  
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FILE:



[EAC 06 325 89387]

OFFICE: Vermont Service Center

DATE: AUG 22 2007

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 was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims 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 director denied the application on the ground that the applicant did not respond to a request for evidence that he had filed his TPS application within 60 days of the denial of his asylum application, and therefore failed to establish his eligibility for late TPS registration.

On appeal, the applicant asserts that he received no notice that his asylum application had been denied and therefore did not know that his TPS application was not timely filed. The applicant asks that his case be reconsidered.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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 conditions described in paragraph (f)(2) of this section.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed his initial Form I-821, Application for Temporary Protected Status, on August 21, 2006 – four years after the close of the initial registration period for El Salvadoran nationals.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above, and filed his TPS application within 60 days of the expiration of that condition, as prescribed in 8 C.F.R. § 244.2(g). The applicant asserts that he meets the condition described at 8 C.F.R. § 244.2(f)(2)(ii) because he has had a pending asylum application since 1993.

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). See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant – who claims to have entered the United States without inspection in August 1993 – filed a Form I-589, Application for Asylum and for Withholding of Deportation, in December 1995. On September 26, 2005, the application was denied by the Director, San Francisco Asylum Office, on the ground of abandonment after the applicant failed to appear for an asylum interview scheduled for September 23, 2005. On December 27, 2005, the application was denied for a second time on the same ground, after the applicant failed to appear for an asylum interview scheduled for December 16, 2005. It is noted that initial denial of the asylum application in September 2005, and the interview notice that preceded it, were correctly sent to the applicant's current address, whereas the second denial of the asylum application in December 2005, and the interview notice that preceded it, were sent to an incorrect, old address of the applicant's that appears on the asylum application of ten years earlier.

The applicant filed his initial TPS application at the VSC on August 21, 2006 – four years after the close of the initial registration period for El Salvadoran nationals. On October 24, 2006, the director issued a notice of intent to deny (NOID), in which she noted that the asylum application was denied on December 27, 2005, that

the TPS application was filed on August 21, 2006, which was past the 60-day grace period provided in 8 C.F.R. § 244.2(g), and requested the applicant to provide information as to whether he had filed a motion to reopen or reconsider the asylum application. The applicant did not respond to the NOID. On February 21, 2007, therefore, the director issued a decision denying the application for TPS on the ground that the applicant failed to establish his eligibility for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2).

On appeal the applicant asserts that he was not aware that his asylum application had been denied because he had received no notice thereof. If he had known his asylum application was no longer pending, the applicant contends, he would have filed his TPS within the required 60-day period after its denial.

The evidence of record does not support the applicant's assertion that he was not informed of the denial of his asylum application. Although the second denial in December 2005, and the interview notice that preceded it, were sent to an old, incorrect address, the first denial in September 2005, and the interview notice that preceded it, were both sent to the applicant's correct and still current [REDACTED] (An earlier notice on June 22, 2005, canceling a previously scheduled asylum interview on July 1, 2005, was also sent to the applicant's correct, current address.) Thus, the asylum application was actually denied for the first time in September 2005, a notice thereof was sent to the applicant's current address, and no motion to reopen or reconsider was filed.

Accordingly, the applicant's qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) terminated on September 26, 2005. To meet the 60-day deadline for late TPS filing prescribed in 8 C.F.R. § 244.2(g), the applicant had to file his Form I-821 application no later than November 25, 2005. Even if the 60-day grace period is calculated from the date of the second denial of the asylum application – December 16, 2005 – the TPS application would have to have been filed by February 14, 2006. The applicant did not meet this deadline, since his application for TPS was not filed until August 21, 2006.

Thus, the applicant has failed to establish his eligibility for late TPS registration. The director's denial of the application will therefore be affirmed.

It is also noted that the applicant, according to a report in the record from the Federal Bureau of Investigation (FBI), was arrested in Oakland, California, on June 17, 1999, on a charge of spousal battery. In any further proceedings before CIS, the applicant must furnish evidence of the final court disposition of that arrest, and any other charges against him.

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 that burden.

**ORDER:** The appeal is dismissed.