

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

19 M 1

FILE:

[WAC 05 222 70047]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 01 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:

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.

A handwritten signature in cursive script that reads "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). 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 Form I-821, Application for Temporary Protected Status, on April 17, 2001. The director issued a notice of intent to deny (NOID) on February 18, 2003, giving the applicant 30 days to provide a copy of the certified final court disposition of an arrest on December 16, 1995 by the Norwalk Sheriff's Office and a resulting charge of disorderly conduct involving "Drug w/alcohol." The 30-day response period expired with no additional evidence from the applicant, after which the director denied the TPS application on the ground of abandonment on April 22, 2003, in accordance with the regulation at 8 C.F.R. § 244.9(c).

On April 28, 2003, the applicant filed a late response to the NOID, accompanied by a letter from the County of Los Angeles, Sheriff's Department Headquarters, dated April 23, 2003, indicating that the applicant had no record with the Los Angeles County Sheriff's Department for the year 1995. The AAO notes that this letter did not comply with the NOID's specific request to submit the final court disposition for the applicant's 1995 arrest "from the court, **not the police station** (emphasis in the original)." The applicant did not appeal the director's denial of his initial TPS application.

The applicant filed the current Form I-821 on May 10, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on March 17, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant filed a timely appeal on April 14, 2006, asserting that he was physically disabled at the time the NOID was issued on the initial TPS application in 2003, and was therefore unable to respond on time. The applicant indicates that he did respond at a later date, referring to his submission on April 28, 2003 of the letter from the Los Angeles County Sheriff's Department. He also cites an additional letter submitted in support of the current appeal from the Superior Court of California, County of Los Angeles, dated February 13, 2004, which states that the court has no record of any action involving the applicant between January 1990 and January 2004.

There is no evidence in the record of the applicant's claimed disability in 2003. Whatever the state of the applicant's health may have been, the record shows that he did procure the letter from the Los Angeles County Sheriff's Department and submit it to the California Service Center in April 2003. As previously discussed, that letter was not filed within the time period set by the director, and did not satisfy the requirements of the NOID in any event. The AAO also notes that the letter from the Superior Court of California in Los Angeles, despite its date of February 13, 2004, was not submitted to the service center until April 2006, more than two years later. Furthermore, the letter does not indicate whether that particular court would have had jurisdiction over the charge arising from the applicant's arrest in 1995.

The regulation at 8 C.F.R. § 244.9(c) expressly provides that “[f]ailure to timely respond to a request for information . . . without good cause will be deemed an abandonment of the application and will result in the denial of the application for lack of prosecution” Based on the entire record, the AAO concurs with the director’s decision to deny the applicant’s initial TPS application on the ground of abandonment in April 2003.

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. *See* 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 current application will be affirmed.

There is no indication that the applicant is attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

An alien applying for Temporary Protected Status, or TPS, 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.