



U.S. Citizenship
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 05 2007

[WAC 05 224 88706]

IN RE:

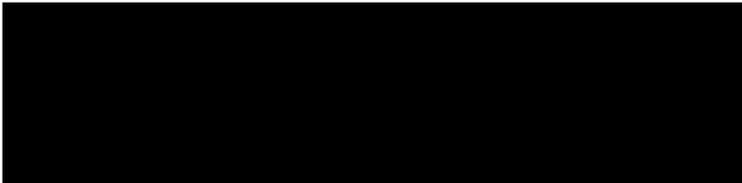
Applicant:



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.

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 indicates that the applicant filed a TPS application during the initial registration period on July 9, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 245 56102. The director denied that application on March 31, 2005, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on November 16, 2004. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application (Form I-821) on August 8, 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 September 12, 2005, counsel filed a motion to reopen the director's decision to deny Form I-765, Application for Employment Authorization, that was also denied on August 8, 2005. The director treated the motion as an appeal for the denial of Form I-821, and rejected the appeal as improperly filed. On November 25, 2005, counsel appealed the director's decision to reject the appeal, stating that the appeal was not untimely.

As provided in 8 C.F.R. § 103.5a(b), 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. The director's decision of denial, dated August 8, 2005, advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before September 10, 2005; however, because this date fell on a Saturday, the appeal was timely filed on Monday, September 12, 2005, the first business day. Therefore, as claimed by counsel, the appeal was timely filed. Accordingly, the director's decision dated October 27, 2005, rejecting the appeal filed on September 12, 2005, will be withdrawn.

The record, in this case, indicates that the director denied the re-registration application on August 8, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

To be eligible for re-registration for TPS, 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 May 12, 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.

However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record indicates that the applicant subsequently appeared for fingerprinting on April 26, 2006, based on his re-registration application. The Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant (name used: [REDACTED]) was arrested on July 28, 2000, in San Francisco, California, for driving under the influence of alcohol/drugs, and was also subsequently charged with reckless

driving on a highway. The final court disposition of this arrest is not included in the record of proceeding. CIS must address this arrest and/or conviction in any future decisions or 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.