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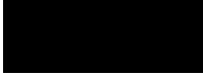
**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: California Service Center

DATE:

MAR 22 2007

[WAC 05 223 82839]

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, 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 applying for 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 grounds that the record failed to establish the applicant's eligibility for late registration; his continuous residence and physical presence in the United States for the requisite time periods; and the final court disposition of an arrest.

On appeal the applicant submits the final court disposition of his arrest.

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 designated by the Attorney General 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

El Salvador nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 May 11, 2005.

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.

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. 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).

On March 7, 2006, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence of his qualification for late registration, his date of entry into the United States, his residence and physical presence in the United States from the dates applicable to El Salvadoran nationals, and the court disposition of an arrest by the sheriff's office in Gainesville, Georgia in 1996. The applicant was advised to submit the requested evidence within 33 days. The applicant did not respond to the NOID during the required time period.

In a Notice of Decision dated May 10, 2006, the director noted the applicant's failure to respond to the NOID and denied the application on the grounds that the applicant failed to establish that he was eligible to file a late TPS registration; that he has been a continuous resident of the United States since February 13, 2001, and physically present in the country since March 9, 2001; and the final court disposition of the 1996 arrest.

On appeal the applicant has submitted the final court disposition of his arrest from the State Court of Hall County, Georgia. It shows that he was arrested on the misdemeanor charge of intoxication in public on September 22, 1996, that the offense was punishable by up to one year of imprisonment, that the applicant pleaded guilty to the charge on November 21, 1996, and that he was sentenced to five days incarceration in the Hall County Detention Center. Thus, the evidence of record indicates that the applicant has been convicted of one misdemeanor committed in the United States. As such, the applicant is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), and has overcome this ground for denial.

The applicant has still not provided any evidence, however, that he qualifies for late TPS registration under one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2). Nor has the applicant submitted any evidence that he has been continuously physically present in the United States since March 9, 2001, as required under 8 C.F.R. § 244.2(b), and continuously resident in the United States since February 13, 2001, as required under 8 C.F.R. § 244.2(c). Accordingly, the director's decision to deny the application on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative ground for denial. An alien applying for 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.