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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 20 2007
[WAC 05 162 77117]

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: 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, 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 director denied the application because the applicant failed to establish his eligibility for TPS late registration.

On appeal, the applicant submits evidence in support of his claim of eligibility for TPS.

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, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Service (CIS) on March 11, 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).

On February 14, 2006, the director requested the applicant to submit evidence to establish his eligibility for TPS late registration. The director also requested the applicant to submit evidence to establish his continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit the final court dispositions for his past arrests.

The applicant responded to the director's request and submitted the following: copies of the court dispositions from the Superior Court of California, County of Santa Barbara, Figueroa Division; copies of his Form 1040, U.S. Individual Income Tax Returns, for the years: 2000, 2001, 2002, 2003, and 2004; earnings statements dated July 30, 2004, January 20, 2005, August 6, 2005, September 12, 2005; two hand-written receipts dated January 27, 2005, and April 9, 2005; a certificate of completion dated February 26, 2004; an application for certificate of title dated May 12, 2005; a copy of his Social Security Card; copies of his Florida Identification Card and Driver License; two auto insurance letters dated January 27, 2005, and June 3, 2005; a copy of a receipt dated August 30, 2004, from [REDACTED] a bank statement for the period October 19, 2005 through November 16, 2005; copies of a letter dated March 13, 2006, along with English translation, from [REDACTED] an ASC Fingerprint Appointment Notice dated January 20, 2006; and three receipt notices dated December 12, 2003, and February 11, 2005.

The director determined that the applicant did not establish his eligibility for TPS late registration denied the application on November 21, 2006.

On appeal, the applicant states that he provided proof of residence from the years 2000 through 2005 as well as documents from the Superior Court of California. In addition, the applicant submits a change of address

notification and copies of the final court dispositions from the Superior Court of California for the County of Santa Barbara.

On appeal, the applicant submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, the applicant did not submit any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

A review of the record of proceedings reflects that the applicant submitted copies of his mother's Internal Revenue Service (IRS) U.S. Individual Income Tax Returns for the years 2000, 2001, and 2002. However, even though she had claimed him as a dependent on her tax documents, the applicant has not submitted sufficient evidence to substantiate his physical presence in the United States for the same time period. The burden is on the applicant to establish his continuous residence since February 13, 2001, and his continuous physical presence since March 9, 2001. The remaining evidence in the record post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States.

Therefore, beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

Further, the record of proceedings contains a Federal Bureau of Investigation report reflecting the following:

- (1) On October 9, 2005, the applicant was arrested by the Sheriff's Office of Santa Barbara, California, and charged with "001 Counts of DUI Alcohol/Drugs," "001 Counts of DUI Alcohol/0.08 Percent," and "001 Counts of Obstruct Public Officer," [REDACTED] and,
- (2) On January 26, 2006, the applicant was arrested was arrested by the Sheriff's Office of Santa Barbara, California, and charged with "001 Counts of DUI Alcohol/0.08 Percent," and "001 Counts of Obstruct/Etc. Pub Ofcr/Etc" (Case [REDACTED])

The record contains the final court dispositions for the arrest, as detailed in No. 1 above, reflecting that the applicant was sentenced to 30 days in jail for violations under California Vehicle Code Section 23152 (b) and California Penal Code 148(a)(1). However, the applicant has failed to provide the final court dispositions for his arrest as detailed in No. 2. In any future proceedings before CIS, the applicant must submit evidence of the final court disposition of this and any other charge(s) against him.

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.