



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 0624250425 Appeal]
[WAC 05 21272797 Application]

Date: FEB 01 2008

INRE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 V.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 California Service Center. 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 (CSC), and is now before the Administrative Appeals Office (AAO) 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 02 088 52734 during the initial registration period. The Director, Texas Service Center, denied that application on December 13, 2002, after determining that the applicant had abandoned his application by failing to respond to a request to appear for fingerprinting..

Since the application was denied due to abandonment, there was no appeal available;- however, the applicant could have filed a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. After review of the record, the Chief, AAO, affirms the director's denial decision.

The applicant filed the current Form I-821 on July 10, 2006 under receipt number WAC 0521272797. The CSC Director denied the application on July 10, 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 director's decision does not address the fact that the applicant was filing 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 Salvador was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services on September 5, 2006.

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 record contains the applicant's argument that he is eligible for late initial registration because his spouse has been approved for TPS. The applicant submitted a copy of the couple's marriage certificate and her Form I-766, Employment Authorization Card valid from July 25, 2005 until September 9, 2006.

The applicant's marriage certificate indicates that he married _____ in the State of Texas on August 10, 2006. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the initial registration period, he is not eligible for late registration for that reason. 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). Therefore, the application shall be denied for this reason.

On November 3, 2006, the Director, Vermont Service Center (VSC), denied another Form I-821 filed by the applicant under Receipt number EAC 06 340 74746 because the applicant had not established that he was eligible for late initial registration and that he had failed to submit a final court disposition for his March 27, 2004 arrest by the Houston Sheriff's Office for his failure to stop and give information involving an accident that had resulted in more than \$200 in damages.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define "felony" and "misdemeanor" as:

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.

The applicant's Federal Bureau of Investigation fingerprint results report record **reflects** that on March 27, 2004, the applicant was arrested by the Sheriffs Office in Houston, Texas for failure to stop and give information involving an accident that had resulted in **more** that \$200 in damages.

On November 3, 2006, the VSC Director requested that the applicant submit the final court disposition for his March 27, 2004 arrest listed above. He has not done so. Accordingly, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently; the application shall be denied for this additional reason.

It is noted that this determination will have little practical effect because the applicant was granted Adjustment of Status in removal proceedings under the provisions of Section 245(i) of the Act on June 19, 2007 by **an** Immigration Judge in Houston, Texas.

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 cited 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.