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U.S. Citizenship
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Services

NY

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FILE:



Office: California Service Center

Date: **FEB 21 2008**

[WAC 06 041 50155, *appeal*]
[SRC 04 201 53983]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

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 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 TPS application on March 27, 2001, under CIS receipt number SRC 01 157 61203. The Director, Texas Service Center, denied the application due to abandonment, on October 9, 2002, because the applicant failed to appear for fingerprinting. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 9, 2004, under CIS receipt number SRC 04 201 53983, and indicated that he was re-registering for TPS. The Director, California Service Center, categorized that application as a new initial registration for TPS, and denied that application on October 11, 2006, because the applicant failed to establish eligibility for late initial registration. The director also noted that the applicant failed to provide final court disposition for four (4) arrests, as requested by the director in a July 31, 2006, notice of intent to deny.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on July 9, 2004.

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 appeal, counsel states only that no records are available for the applicant's criminal charges. Counsel does not submit any additional evidence on appeal.

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. 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.

The applicant has not submitted 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 decision to deny the application for temporary protected status will be affirmed.

As noted by the Director, California Service Center, the applicant failed to provide final court dispositions for his arrests (detailed below). The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his re-registration application, reflects that:

1. On November 4, 1982, the applicant, under the name [REDACTED] was arrested by the Police Department, Huntington Beach, California, and charged with "COMMERCIAL BURGLARY;"
2. On February 17, 1983, the applicant was arrested by the Sheriff's Office, Norwalk, California, and charged with "BURGLARY;"
3. On July 21, 1983, the applicant was arrested by the Police Department, Atascadero, California, and charged with: Charge "BURGLARY;" and, Charge 2: "CONSPIRACY;" and,
4. On September 26, 1983, the applicant was arrested by the Sheriff's Office, Santa Ana, California, and charged with Charge 1: "BURGLARY;" and, "RECEIVE KNOWN STOLEN PROPERTY."

The applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed above. While counsel states that no criminal records are available for the applicant, courts do maintain electronic records even after the physical records have been destroyed. The burden is on the applicant to provide affirmative evidence that he is eligible for the benefit sought. As of this date, the applicant has failed to submit the final court dispositions for Nos. 1 through 4 above. CIS must address the arrests and any convictions in any future proceedings. 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). For this additional reason, the director's decision is also affirmed.

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.