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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

M

[REDACTED]

FILE: [REDACTED]
[EAC 09 095 71959]

OFFICE: VERMONT SERVICE CENTER

DATE:

APR 13 2010

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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's initial TPS application had been denied on April 15, 2006.¹ On appeal, counsel asserts, "[t]his allegation is clearly incorrect, as [the applicant] did not initially file for TPS until March 27th, 2008."

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 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

¹ The director, in issuing his decision on June 1, 2009, listed the applicant's receipt number for the TPS application, but inadvertently indicated that the decision may not be appealed.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Counsel's assertion on appeal that the applicant did not initially file a TPS application until March 27, 2008, has no merit. The record reflects that on March 13, 2005, the applicant filed an initial TPS application (WAC0522594207). On September 27, 2005, a Notice of Intent to Deny was issued, which requested the applicant to submit the court dispositions for his arrests on December 19, 1994, for "burglary, and on December 2, 2001, for possess substance, int. mfg. meth. etc." On April 15, 2006, the Director, California Service Center, denied the application because the applicant failed to submit the requested court documents.

On appeal, counsel asserts that the director's prior decision dated October 22, 2008, was issued in error as the requested court documentation "had already previously been submitted in [the applicant's] original Late TPS filing." Counsel's assertion, however, is not supported by the record. The record reflects that the applicant filed his second TPS application (EAC0818070084) on March 27, 2008. On September 4, 2008, the director issued a Notice of Intent to Deny, which requested the applicant to submit: 1) evidence to establish eligibility for late registration; and 2) the final dispositions relating to his arrests on December 19, 1994, December 2, 2001, and on January 4, 2006, for inflicting corporal injury upon a child.

The applicant, in response, submitted evidence to establish his eligibility as a late registrant under 8 C.F.R. § 244.2(f)(2)(ii).² In regards to his criminal history, the applicant provided:

- A letter dated September 24, 2008, from the Los Angeles County Superior Court of California, indicating that a search of its files had been made and there was no record in the Alhambra, Monrovia or Santa Anita Court.
- A letter dated September 24, 2008, from the Whittier Police Department indicating that the applicant was arrested under warrant on December 2, 2001, and on January 4, 2006, the applicant was arrested and subsequently charged with inflicting corporal injury upon spouse/inhabitant, a violating section 273(a) of the California Penal Code.
- A letter dated September 24, 2008, from the Monterrey Police Department indicating that the Office of the District Attorney, Alhambra Municipal Court had rejected the charge of burglary due to insufficient evidence.
- Court disposition in [REDACTED] for driving without a license, a violation of section 12500 of the California Penal Code.

The director, in denying that application on October 22, 2008, noted that the document from the Whittier Police Department failed to indicate the outcome of the arrest on December 2, 2001, and January 4, 2006.

The letter from the Los Angeles Superior Court alone is not affirmative evidence and fails to meet the applicant's burden. If no charges were filed or convictions resulted in the applicant's arrests on December 2, 2001, and January 4, 2006, it is unclear why the applicant did not provide

² The applicant had an asylum application pending during the initial registration period.

documentation from the Office of the District Attorney or the Whittier Police Department to corroborate the letter from the court. The applicant provided documentation from the Monterrey Police Department regarding the *final outcome* of his burglary arrest on December 19, 1994. The applicant has, therefore, failed to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The applicant filed the current TPS application on December 26, 2008, and indicated that he was re-registering for TPS. The director denied the re-registration application on June 1, 2009, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. Consequently, the director's decision to deny the application for TPS will be 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.

Finally, the record reflects that a Form I-862, Notice to Appear, was issued on May 29, 2007. The applicant has a hearing before the Immigration Court on September 9, 2010.

ORDER: The appeal is dismissed.