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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
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAR 24 2010
[EAC 09 108 89247]

IN RE: Applicant: [REDACTED]

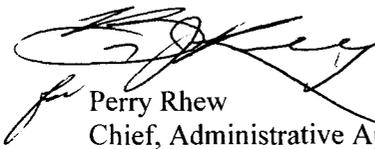
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 director denied the application because the applicant failed to: 1) establish he was eligible for late registration; 2) provide the requested court dispositions.

On appeal, counsel asserts that the applicant does not recall receiving any notices in relation to his asylum application subsequent to his last interview. Counsel asserts that the applicant may still renew his application before the immigration judge under 8 C.F.R. § 208.18. Counsel asserts that the applicant was cleared of all charges regarding his arrests.

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 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).

"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 first issue to be addressed is whether the applicant has established eligibility as a late registrant.

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.

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 U.S. Citizenship and Immigration Services (USCIS). 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).

The record reflects that the applicant filed a Form I-589, Application for Asylum and Withholding of Removal on August 30, 1991. On December 4, 1992, a Form I-221, Order to Show Cause and Notice of Hearing, was issued. On December 9, 1992, the asylum application was denied. On February 2, 1992, a notice was sent to the applicant informing him of a scheduled hearing before an immigration judge on March 9, 1993. On March 9, 1993, the applicant failed to appear at his deportation proceedings, and the case was administratively closed by the immigration judge. All notices were sent to the applicant at his address of record.

The applicant filed his TPS application with USCIS on December 30, 2008.

The director, in denying the TPS application, determined that because the applicant failed to file his TPS application within a 60-day period after his case was administratively closed, he was not eligible for late registration.

Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

Therefore, it is concluded that the applicant's asylum application is still pending, and the applicant qualifies for late initial registration on this basis.

Accordingly, the applicant has established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). The director's finding on this issue will be withdrawn.

The second issue to be addressed is the applicant's criminal history.

The FBI report dated May 5, 2009, reflects the applicant's criminal history in the state of California as follows:

1. On August 26, 1996, the applicant was arrested by the Monterey Police Department for battery, a violation of section 242 PC, a misdemeanor. The applicant was convicted of this offense and sentenced to serve time in jail.
2. On March 20, 1997, the applicant was arrested by the Sheriff's Office in Salinas for battery, a violation of section 242 PC, a misdemeanor. The applicant was convicted of this offense and sentenced to serve five days in a work program.

On May 8, 2009, a Notice of Intent to Deny was issued, which requested the applicant to submit certified court dispositions for all his arrests. Counsel, in response, submitted a letter dated June 11, 2008, from Monterey County Superior Court of California, indicating that the records in [REDACTED] charging the applicant with the violation of section 242 PC had been destroyed pursuant to Government Code section 68152. Counsel also provided a statement from the applicant, who asserted, in pertinent part:

Although my background results reflect two incidents, I have only been arrested once. I was pulled over several years ago for a broken light and told that there was a warrant out for my arrest. I tried to explain that I had never had any problems with the law before by the officer brought me to the station and took my photos and fingerprints. When I went before a judge, I told the judge that I did not do what they were accusing me of and I was given another date to return to court. At the second appearance, five police officers told the judge that I was not the person that they had been looking for. Apparently someone had stolen my identity. The judge dismissed all the charges against me.

The applicant, however, has not provided any credible evidence to support his assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant could have contacted the California Department of Justice Bureau of Criminal Identification to obtain either his criminal history record and/or a clearance letter. *See* section 11105 of the California Penal Code. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error.

The applicant is ineligible for TPS because of his failure to provide the court documentation necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.