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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M₁

DATE: **MAY 10 2011** Office: VERMONT SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 (AAO) 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 establish he was eligible for late registration.

On appeal, counsel asserts:

The applicant was beneficiary and registrant for initial registration for TPS from Honduras [sic] in 1999. His TPS was later improperly denied by the Service due to his one disorderly persons offense.

The Service contends that the instant application should be reviewed under the initial registration provisions. This is clear error, as the applicant was a previous beneficiary for several years and as such should be dealt with under the regular provisions for TPS as a re-registrant.

He is a previous applicant for TPS, applied during the initial registration period and was granted TPS, is not inadmissible, and has no adverse factors that make him ineligible 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 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 Secretary 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.

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 March 9, 2012, upon the applicant's re-registration during the requisite period.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Counsel's assertions on appeal are without merit. The applicant claimed on his TPS applications to be a citizen of El Salvador and has presented a copy of his birth certificate as evidence. The director did not deny the current TPS application based on the applicant's criminal record; it was denied because the applicant failed to establish that he was eligible for late registration. The record contains no evidence that the applicant was approved TPS.

The record reflects that the applicant filed his initial TPS application [REDACTED] on May 24, 2001. Pursuant to a Federal Bureau of Investigation report that revealed two arrests on January 19, 2001 and May 22, 2001 for shoplifting, the applicant was requested on April 28, 2003, to submit the final court dispositions for all arrests. The applicant did not submit the requested documentation prior to the issuance of the director's decision. Accordingly, on June 23, 2003, the director denied that application due to abandonment. No motion was filed from the denial of that application.¹

On September 11, 2006, the applicant filed another application [REDACTED] and indicated he was re-registering for TPS. On November 29, 2006, that application was administratively closed because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On February 9, 2007, the applicant filed another initial application [REDACTED]. The director denied that application on January 23, 2008, because the applicant failed to establish that he was eligible for late registration.

The applicant filed his current application on October 25, 2007. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 27, 2008.

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.

To qualify for late registration, the applicant must provide evidence that at the time of *the initial registration period* (March 9, 2001, to September 9, 2002) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). The provisions for late registration detailed were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

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 TPS will be affirmed.

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

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.

Finally, it is noted that a Form I-862, Notice to Appear, was issued on November 8, 2008. A removal hearing was held on April, 1, 2009, and the alien was granted voluntary departure from the United States on or before April 15, 2009. On April 8, 2009, the applicant departed from the United States.

ORDER: The appeal is dismissed.