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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:

APR 05 2012

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. § 1254a

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.

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 and because he failed to submit court documentation relating to his arrest on June 20, 2004.

On appeal, counsel re-submits copies of the documents from the Los Angeles Superior Court and Los Angeles Police Department. Counsel states these documents are in fact "new and compelling evidence" to overcome the reasons for the denial of the applicant's initial TPS application.

An alien shall not be eligible for TPS 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.

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 September 9, 2013, 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).

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

The Federal Bureau of Investigation report reflects that on June 20, 2004, the applicant was arrested by the Los Angeles Police Department of California for battery upon spouse/cohabitant and failure to appear/writ promise.

The record reflects that the applicant filed his initial TPS application [REDACTED] on August 22, 2001. The Director, California Service Center, denied that application based on abandonment on October 13, 2004, because the applicant had failed to submit the requested final court disposition relating to his arrest on June 20, 2004. No motion was filed from the denial of that application.

It is noted that the applicant did submit a response to the director's notice of August 12, 2004, but his response only consisted of court documents dated August 23 and 24, 2004, from the Los Angeles County Superior Court, which indicated that a thorough search from January 1, 1990 to the present had been conducted of the misdemeanor and/or felony indexes and no record was found in the names of [REDACTED] for an arrest of "drinking and fighting" in July 2004.

At the time the applicant filed his current application, he re-submitted the court documents dated August 23 and 24, 2004, from the Los Angeles County Superior Court along with:

- A court document dated January 16, 2007, from the Los Angeles County Superior Court, which indicated that a search from April 24, 1986 to the present had been conducted of the felony indexes and no record was found in the names of [REDACTED]
- A booking report (8170340) from the Los Angeles Police Department for a violation of section 243(e)(1) PC, spousal battery.
- A letter dated January 16, 2007, from the Los Angeles Police Department relating to the applicant's arrest on June 20, 2004, for violating section 243(e)(1) PC, battery upon spouse/cohabitant under booking number [REDACTED]. The applicant was released from custody on June 24, 2004, because "PROSECUTION REJECT-INTEREST OF JUSTICE. NO CASE FILING INFORMATION FOUND IN LOS ANGELES COUNTY."¹

As no charge was filed for the battery offense, there would be no court disposition to submit from the court. The applicant has presented court documentation which reflects that he has no misdemeanor or felony convictions under the related regulations in 8 C.F.R. § 244.4(a). As the applicant has overcome the director's finding regarding his criminal history, the decision of the director to deny, in part, this application will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

¹ This document was initially received by USCIS in February 2007.

The record reflects that the applicant filed his initial TPS application [REDACTED] on September 18, 2001. As previously noted, the application was denied due to abandonment on October 13, 2004, because the applicant had failed to submit the requested final court disposition relating to his arrest on June 20, 2004. No motion was filed from the denial of that application.

The applicant filed a re-registration application [REDACTED] on March 2, 2005. On October 20, 2005, the Director, California Service Center, denied that application because the applicant's initial TPS application had been denied and he was not eligible to apply for re-registration for TPS. The applicant filed an appeal from the denial of the re-registration application. The AAO, in dismissing the appeal on December 28, 2006, concurred with the director's findings. The AAO, upon a *de novo* review, also determined that the applicant had: a) not submitted any evidence to establish that the application should be accepted under the late registration provisions; and b) failed to submit the request court documentation for his arrest on June 20, 2004 for battery upon spouse/cohabitant.

The applicant filed re-registration applications [REDACTED] on September 1, 2006 and September 24, 2007. The applications were administratively closed on March 30, 2007, and February 21, 2008, respectively as the applicant was not eligible to apply for re-registration for TPS due to the denial of his initial TPS application.

The applicant filed the current TPS application on May 31, 2011. The applicant indicated that he is eligible for TPS as he is a spouse of an alien currently eligible to be a TPS registrant. The applicant submitted a copy of his marriage certificate which occurred on June 13, 2009. The director, in denying the application on August 19, 2011, determined that the applicant was not eligible for TPS under 8 C.F.R. § 244.2(f)(2)(iv) as his marriage did not occur during the initial registration period.

On appeal, the applicant through counsel neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) 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. The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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