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U.S. Citizenship  
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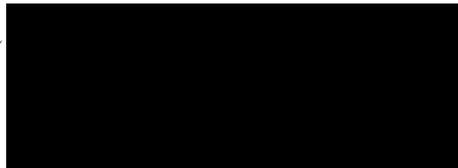


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 15 2004

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:



INSTRUCTIONS:

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

*Cinder N. Gomez*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant through counsel states that he gave his application to a woman named [REDACTED] who misrepresented herself as an attorney. The applicant further states that [REDACTED] sent his application in with cash instead of a money order or some other acceptable form of payment which caused his application to be filed after the initial registration period had ended. The applicant also noted that the director erroneously cited dates which apply to Hondurans and Nicaraguans applying for TPS in his decision.

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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 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.
- (3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1989, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1988.
- (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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the allotted time period from July 16, 2003, until September 15, 2003. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now CIS, on November 8, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee,

or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 January 28, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence of his physical presence in the United States. The applicant; however, failed to submit any evidence that he was eligible for late registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 19, 2003.

On appeal, the applicant asserts that his application would have been timely filed but for the fact that the woman [REDACTED] who processed his application sent cash instead of the acceptable form of payment which caused his application to be returned to him. The applicant further asserts that he returned the package to Ms. [REDACTED] asking her to file it with the proper payment. Finally, the applicant states that he received a receipt from the Texas Service Center on November 8, 2002, and believed he had complied with the statutory deadline to apply for TPS.

The applicant submitted a letter from the Texas Service Center, dated August 30, 2002, which stated that they cannot accept cash and therefore the petition that was submitted could not be adjudicated. The letter has little probative value as it is addressed "Dear Applicant" and does not contain the applicant's alien registration number.

The applicant's assertion that [REDACTED] originally filed his application prior to August 30, 2002, (in order to have received the above mentioned letter), is not persuasive. It is noted that the applicant dated his Form I-821 on September 2, 2002. In addition, the record shows no evidence of any correspondence with [REDACTED]

Nevertheless, it is clear that the director erroneously requested evidence citing dates that apply to Hondurans and Nicaraguans, while the applicant is from El Salvador. If it is determined that the applicant can establish his eligibility for late registration under section 244 of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1254, this issue must be addressed.

The case is remanded for further consideration and action. The director may request any evidence deemed necessary to assist her with the determination of the applicant's eligibility for TPS.

**ORDER:** The director's decision is withdrawn. The case is remanded to the director for further action in accordance with the foregoing.