

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MU

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 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:

[REDACTED]

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration and action.

The applicant is 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 failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserted that the denial of the petition is an abuse of discretion, and that the applicant has provided sufficient evidence of continuous residence to establish eligibility for TPS. Counsel indicated that a brief would be submitted within 30 days of the filing date of the appeal. To date, no brief or evidence has been received; therefore, the record will be considered complete.

Pursuant to 8 C.F.R. § 103.2(b)(8), where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or Citizenship and Immigration Services (CIS) finds that the evidence submitted does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, CIS shall request the missing initial evidence, and may request additional evidence.

In this case, the record contains no evidence of ineligibility; however, the director failed to provide the applicant with an opportunity to provide additional evidence to establish his continuous residence and continuous physical residence in the United States during the requisite periods.

In addition, it is noted that the applicant has not provided any evidence to establish that he is eligible for late registration for TPS. The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his initial application with CIS on November 13, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 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 director, however, did not raise the applicant's late registration as a reason for denial.

The director shall provide the applicant with an opportunity to provide additional evidence consistent with the foregoing. Upon receipt of all evidence and representations, the director shall enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a new decision.