



U.S. Citizenship  
and Immigration  
Services

M

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 28 2004**

IN RE:

Applicant:

aka

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

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**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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

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 he was eligible for late registration.

On appeal, the applicant states that he did not file his TPS application on time because of his carelessness. The applicant requests that his application be reconsidered.

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 TPS 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.
- (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 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. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on September 18, 2003.

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 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).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 15, 2004. On appeal, the applicant states that because he was careless, he failed to file his TPS application within the initial registration period. The applicant does not submit any evidence in support of his claim of eligibility for Temporary Protected Status.

It is noted that on the TPS application filed on September 18, 2003, the applicant indicated that he had entered the United States on January 1, 2000, without inspection, and certified, on Part 4. Eligibility Standards, under penalty of perjury, that he had never been arrested and/or placed under any immigration proceedings. Specifically, he certified, within less than a year after his deportation, that he had not been deported or removed from the United States within the last five years. However, it is noted that the applicant was ordered deported and removed from the United States on March 19, 1999, under record A77 253 981. He was apprehended on May 16, 2004, at a highway "checkpoint" by the U.S. Border Patrol, California, after reentering the United States on January 15, 2004, without inspection, at Calexico, California.

The precursor to the applicant's 1999 removal proceedings began with his arrest at Yuma, Arizona, on October 24, 1998, by the U.S. Border Patrol. At that time, the applicant claimed to be a Mexican citizen and voluntarily returned to Mexico. Mexican authorities subsequently refused the applicant entry and returned him to the custody of the U.S. Border Patrol because he indicated to them that he was not a Mexican national. In removal proceedings, the Immigration Judge ordered the applicant's asylum hearing "pretermitted" and denied the withholding of deportation/removal. To be eligible to file under the provisions of late initial registration, the applicant must have had an asylum application pending during the initial registration period. Although it is acknowledged that the applicant may have recently voiced a claimed fear of return to El Salvador (approximately one month after his most recent arrest by the U.S. Border Patrol in May 2004), this does not establish eligibility for TPS under the provisions for late registration, as any asylum application must have been pending during the initial registration period, as previously noted. 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) and (g). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has failed to submit any evidence to establish that he has continuously resided in the United States since February 13, 2001, and that he has been physically present in the United States since March 9, 2001. The departures from, and reentries (or attempted reentries) into the United States, outside of the required continuous physical presence and continuous residence timeframes under the TPS program, without evidence of brief, casual, and innocent absence(s), also negate a favorable finding for continuous physical presence and continuous residence. Therefore, the applicant also has failed to establish that he has met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), and the application will also be denied for these reasons.

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.