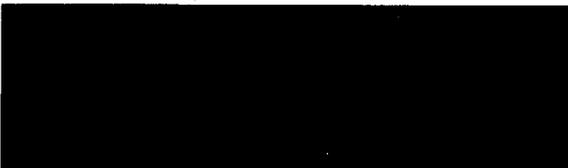




U.S. Citizenship  
and Immigration  
Services



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 12 2005

[EAC 03 076 52429]

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:



**PUBLIC COPY**

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.

*Cindy N. Gomez*

Robert P. Wiemann, Director  
Administrative Appeals Office

~~invasion of personal privacy~~

**DISCUSSION:** The application was denied by the Director, Vermont 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 that he was eligible for late registration.

On appeal, the applicant provides a brief statement and additional documentation in support of the appeal.

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.
- (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 issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed his application on January 2, 2003.

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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on January 2, 2003, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 late initial registration. See 8 C.F.R. § 244.2(g).

In a notice of intent to deny, dated March 26, 2003, the applicant was requested to submit evidence of his eligibility for late registration. The applicant was also requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. In response, the applicant submitted: an affidavit from [REDACTED] stating that the applicant was a tenant at the school from August 2000 to February 2003; Tax Statements and Income Tax Returns for 1999, 2000, and 2001; a copy

of a renewal of his Business Auto Policy for the term of February 28, 2001 through February 28, 2002; and, a Harvard Pilgrim HMO form dated April 2001.

The director found that the evidence submitted in response to the notice of intent to deny failed to establish the applicant's eligibility for late registration. The director denied the application on August 1, 2003.

On appeal, the applicant states that he has been physically present in the United States from March 9, 2001 to the date of filing his TPS application. The applicant submits a copy of his United States nonimmigrant B-1/B-2 (visitor) visa issued at Tegucigalpa on September 30, 1993, and expiring on September 29, 2003, and a copy of his Form I-94, Arrival and Departure Document, showing his entry into the United States on January 7, 1997, as an F-1 nonimmigrant student, admitted for the duration of his student status.

It is noted that on the TPS application, the applicant indicates that he is an "overstay student," but does not indicate when that student status terminated. The record, however, contains no documentary evidence to show whether the applicant remained in nonimmigrant student status since entry into the United States in 1997, or if and when that status terminated. Copies of the applicant's Form(s) I-20(s), Certificate(s) of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students, and evidence that the applicant was given permission to seek employment and that he was still in valid nonimmigrant student status during the initial TPS registration period for El Salvadorans (from March 9, 2001 through September 9, 2002) are not included in the record. To be eligible to apply under the late initial registration provisions of TPS, the applicant must demonstrate that he filed for TPS no later than 60 days from the termination of his status as a non-immigrant student.

No documentary evidence has been presented on appeal to establish that the applicant has met the requirements for late registration as described in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the TPS application for this reason must be affirmed.

An alien applying for temporary protected status 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.