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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
[SRC 03 203 54770]

OFFICE: TEXAS SERVICE CENTER DATE: **MAY 24 2005**

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: 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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application 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 after determining that the applicant had failed to establish his eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence.

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 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 Temporary Protected Status 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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El 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 July 14, 2003.

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. 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On August 21, 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 photocopies of the following documentation: the employment authorization card for his son [REDACTED] under Category C19, with validity from January 11, 2003 through September 9, 2003; the receipt notices for his son's TPS and employment authorization applications dated August 20, 2001; the applicant's El Salvadoran birth certificate, with English translation; receipt notices for the applicant's employment authorization applications under Category C8, pending asylum, dated in 1993, 1995, 1996, and 1997; an acknowledgment of receipt of the applicant's asylum application dated November 17, 1993; a status inquiry from the applicant to the Miami [Florida] Asylum Office dated March 4, 1994, and the response dated March 22, 1994, indicating that the applicant would be scheduled for an interview as soon as resources permit; generic money order receipts dated in July 2003; a rent receipt dated July 5, 2003; an employee identification card from Costa Nursery Farms, Inc., Goulds, Florida; a residential lease document and lead paint disclosures for the period of March 9, 2001 through March 31, 2002; three Western Union money order receipts dated in the year 2000; and, the applicant's El Salvadoran Ministerio De Defensa – Servicio Territorial identification card.

The applicant, however, did not present any evidence of his eligibility to file under the late registration provisions of 8 C.F.R. § 244.2(f)(2) and (g). Therefore, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 23, 2003.

On appeal, the applicant states that he would appreciate consideration of his application, as he needs to support his family in Georgia and his mother in El Salvador. He states that his son and his brother are under the TPS program. He submits a copy of the employment authorization card for [REDACTED] under Category C8, pending asylum, with validity from July 2, 2003 through July 1, 2004. In support of the appeal, the applicant resubmits some of the documentation that had previously been entered into the record. In addition, he newly submits photocopies of: a pay statement from Costa Nursery Farms, Inc., Goulds, Florida, dated July 30, 1999; a Resident History printout from Briarlake Village Apartments, reflecting payments in February and March of 2001; money transfer receipts dated in 1999 and 2000; a Resident Alarm Services Agreement dated October 22, 2001; his Identification Card from the Consulate General of El Salvador, Miami, Florida, issued on June 24, 2002; and, a pay stub dated September 26, 2003.

The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant filed an affirmative application for asylum and withholding of deportation on November 12, 1993. The applicant failed to appear for his interview scheduled on March 12, 1998, in Miami, Florida, and was subsequently referred to the Immigration Judge. The record contains the decision of the Immigration Judge, Miami, Florida, who issued a final order of removal to El Salvador in absentia, on September 11, 1998. The decision documents mailed to the applicant were returned as undeliverable, with a notation that the applicant had left no forwarding address. The applicant's asylum case was not pending during the initial registration period. 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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the record contains an unsigned Warrant of Removal issued at Miami, Florida, on May 12, 1999, following the final order of removal issued by the Immigration Judge, Miami, Florida, on September 11, 1998.

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.