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FILE: 

Office: TEXAS SERVICE CENTER Date: **NOV 02 2005**

[SRC 03 111 54568]

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.

*Robert P. Wiemann*  
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 (AAO) 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 this application after determining that the applicant's initial TPS application had been denied on July 26, 2002.

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 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 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 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. Subsequent extensions of the TPS designation have been granted with validity of the latest extension 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 this TPS application with Citizenship and Immigration Services (CIS), on March 11, 2003.

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).

It is noted that the applicant had previously filed an initial TPS application [SRC 01 141 53860] on March 17, 2001, during the initial registration period. On April 19, 2002, the applicant was requested to submit photo

identification or a national identity document bearing a photograph and/or fingerprint. The director's decision erroneously indicated that the request for additional evidence was sent on March 17, 2001, which is, in fact, the date that the application was filed at the Texas Service Center. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his initial application and issued a denial decision on July 26, 2002. The director advised the applicant that, while that decision could not be appealed, the applicant could file a motion to reopen. The applicant did not file a motion to reopen from that decision.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. Since the initial application was denied on July 26, 2002, this subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as an attempt to file for late initial registration.

It is noted that the applicant attempted to file the instant Form I-821, Application for Temporary Protected Status, in November 2002, indicating that it was an application for re-registration. The director returned the application in November and December of 2002, noting that the applicant's case had been denied and that he needed to submit additional fees. The applicant submitted the additional fees, and the instant application was accepted as a new application for late initial registration on March 11, 2003.

On March 20, 2003, the director issued a Notice of Decision to Deny, denying the instant application as a re-registration, and offered no right of appeal.

The applicant appealed this second Notice of Decision on April 22, 2003. The applicant asserts that he moved from his address on [REDACTED] in Houston, Texas, in "June of the same year," and that is why he did not know that his case had been denied and for what reasons. The applicant states that he filed a change of address with the Post Office; however, the record does not include any evidence of a change of address, other than that indicated on the Form I-821 filed on March 11, 2003, and first submitted in November 2002. The applicant submits additional evidence and requests that his TPS application be reopened and/or reconsidered.

Although the service center director advised the applicant to submit the appropriate fees in order to have his application considered as an application for late initial registration, the director on March 20, 2003, issued a denial that failed to consider the submission as an application for late initial registration. The director erred in this explanation, as this TPS application is properly considered an application for late initial registration. Therefore, the appeal will be considered.

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 applicant submitted a photocopy of an Order of the Immigration Judge, Florence, Arizona, dated May 9, 2000, in his name, under record number [REDACTED] in which the applicant was ordered removed to El Salvador. The record of proceedings under that A-file number reflects that the applicant was apprehended by the United States Border Patrol on April 18, 2000, following his entry without inspection at or near Douglas, Arizona, on or about April 16, 2000, and that, following the final order of the immigration judge, the applicant was removed from the United States via Houston, Texas, on June 9, 2000.

On his Forms I-821, the applicant indicated that he entered the United States without inspection on February 3, 2001, and indicated that he had never been under immigration proceedings.

The applicant previously 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. Although the applicant applied for TPS during the initial registration period, that application was denied due to abandonment. Therefore, this application must be considered as an application for late initial registration. 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 temporary protected status will be affirmed.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints incorrectly reflects that the applicant's fingerprints relate to a record number [REDACTED] rather than [REDACTED]. Review of that record confirms that the [REDACTED] file does not relate to this applicant.

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 appeal is dismissed.