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**U.S. Citizenship
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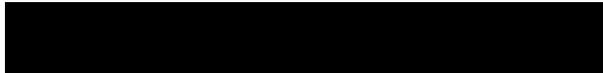
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OFFICE: VERMONT SERVICE CENTER

DATE: **OCT 04 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 he was eligible for late 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 designated by the Attorney General 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.
- (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.

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 application with Citizenship and Immigration Services (CIS) on October 25, 2002. He indicated on his TPS application that he last entered the United States on October 25, 1999.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 May 20, 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 was also requested to submit evidence establishing his qualifying continuous physical presence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided evidence in an attempt to establish his qualifying residence and physical presence in the United States. He also provided photocopies of Employment Authorization Cards indicating that he had been granted TPS under a prior designation of El Salvador and that he had a pending asylum application as of May 23, 1997.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 13, 2004.

On appeal, the applicant states that he has resided in the United States continuously since 1989 with the exception of "absences as allowed by the INS laws for TPS status. I entered illegally in 10/2001 after a family emergency of 30 days - then left again in 11/2001 to return in December. Both absences under 90 days." He submits evidence relating to his residence and physical presence in the United States.

The record reflects that the applicant previously submitted a Form I-589, Application for Asylum and for Withholding of Removal with CIS on May 19, 1997. His application was administratively terminated and he was referred for a removal hearing before an Immigration Judge on May 28, 1998, because he failed to appear for his scheduled asylum interview or request that his asylum interview be rescheduled.

When the applicant failed to appear for his removal hearing on July 29, 1998, he was ordered removed to El Salvador in absentia. On September 4, 1998, the District Director, Washington, D.C., issued a Form I-205, Warrant of Removal/Deportation.

On October 10, 2001, the applicant was apprehended by the United States Border Patrol, along with seven other aliens, at a ranch south of Falfurrias, Texas. The applicant told the officers that he had been ordered removed in absentia and had left the United States "on his own" on August 21, 1998. The applicant told the officers that he left his home in El Salvador on September 17, 2001, and subsequently re-entered the United States near Roma, Texas, on or about October 9, 2001.

On October 11, 2001, the applicant was found guilty in the United States District Court, Southern District of Texas, McAllen Division, of knowingly and willfully entering the United States at a time or place other than as designated by immigration officers in violation of 8 U.S.C. § 1325(a)(1), a misdemeanor, and was sentenced to 90 days suspended sentence, three years unsupervised probation, and a \$10.00 special assessment fee. The prior warrant of removal was reinstated, and the applicant was removed to El Salvador on November 16, 2001.

The applicant claims that he qualifies for late initial registration as an ABC applicant. However, as previously stated, the applicant's asylum application was administratively terminated on May 28, 1998. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant previously departed the United States under an outstanding warrant of removal on August 21, 1998, and apparently did not re-enter the United States until October 9, 2001. He was subsequently removed from the United States on November 16, 2001, and again re-entered the United States without inspection on an unknown date. The applicant claims on appeal that he left the United States in October 2001 "after a family emergency" and re-entered the United States in December 2001 after his removal from the United States on November 16, 2001. These statements contradict his statement to the United States Border Patrol that he left El Salvador on September 17, 2001, and re-entered the United States on or about October 9, 2001. These statements all contradict the applicant's statement on the TPS application, certified as true and correct under penalty of perjury, that he last entered the United States on October 25, 1999. The applicant has not provided any explanation for these discrepancies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In view of the foregoing, the applicant has not established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.