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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 01 2006**

[WAC 03 216 53435]

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, and the case will be remanded for further consideration and action.

The applicant claims to be a 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, counsel submits a brief statement and a declaration from the applicant.

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.

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 Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on June 27, 2003, more than nine months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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 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).

In support of his initial Form I-821, the applicant submitted a photocopy of his El Salvadoran birth certificate, with English translation, and documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on January 5, 2005.

On appeal, counsel asserts that the applicant is eligible for late registration because he had an application for asylum pending.

A review of the record reveals that the applicant filed a first Form I-589, Application for Asylum or for Withholding of Deportation, on October 14, 1992. That application was denied on March 16, 1994. The notice of denial was mailed to the applicant at 2330 W. Glenrosa, Apt. # 240, Phoenix, Arizona, 85015, but was returned as undeliverable.

On September 11, 1995, the applicant filed a second Form I-589. That application remains pending adjudication.

Since the applicant had a request for asylum pending during the initial registration period, he is eligible to file an application for late registration. Therefore, the director's decision to deny the application on this ground will be withdrawn.

However, beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). Furthermore, it is noted that as a result of being fingerprinted in connection with this application, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant has been charged with the following offenses: (1) "Disord Conduct, Drug W/Alc" on October 17, 2001, in San Diego, California; and (2) "Inf Corp Inj, Spouse/Cohab" on June 16, 2002, in San Diego, California. There are no final court dispositions of these charges contained in the record.

Therefore, the case will be remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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 decision of the director is withdrawn. The case is remanded for further consideration and action.