



U.S. Citizenship
and Immigration
Services

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MM

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 05 2006
[WAC 05 222 81644]

IN RE: Applicant: [REDACTED]

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.


for 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 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 submit sufficient evidence to establish eligibility for late registration, and to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

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 alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 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 the latest extension valid until September 9, 2007, 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 shows that the applicant filed his initial application on May 10, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 Citizenship and Immigration Services (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 a Notice of Intent to Deny dated February 27, 2006, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing the application. The director determined that the evidence furnished in response to the NOID was insufficient to establish eligibility for late registration, continuous residence and continuous physical presence, and denied the application on April 7, 2006.

On appeal, the applicant asserts that he has been residing in the United States during the requisite period, and "a lot more years," and that he did submit enough evidence related to his case. He submits additional evidence to establish residence and physical presence, including the original documents of the copies he has previously furnished.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, this finding of the director will be withdrawn.

The applicant, however, neither addressed nor 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). It is noted that the record contains a copy of Form I-797C, Notice of Action, indicating that Form I-130, Immigrant Petition for Relative, filed on the applicant's behalf by [REDACTED] had been received at the California Service Center on April 30, 2001. The record, however, does not contain evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on an approved Form I-130, and that the adjustment application was pending during the initial registration period. The Form I-130, alone, does not convey eligibility for TPS.

Consequently, the director's decision to deny the TPS application on the ground that the applicant had failed to establish eligibility for late registration will be affirmed.

The record contains Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, issued on September 25, 1987, in San Diego, California, based on the applicant's entry into the United States without inspection on or about September 23, 1987. In removal proceedings held on January 6, 1988, the Immigration Judge (IJ) granted the applicant voluntary departure on or before June 30, 1988. On August 19, 1988, in Los Angeles, California, the IJ ordered that deportation proceedings be reopened. On October 24, 1988, the applicant was again granted voluntary departure to El Salvador. The record shows that the Embassy of the United States in San Salvador, El Salvador, verified the applicant's presence in El Salvador on January 18, 1990.

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 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.