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[REDACTED]

DEC 06 2006

FILE: [REDACTED]
[WAC 05 214 73086]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

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 because the applicant had failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement and evidence previously furnished and contained in the record.

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 2, 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 (NOID) dated March 15, 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 director noted that in response, the applicant submitted evidence to establish continuous residence and continuous physical presence in the United States; however, the applicant still failed to submit any evidence of eligibility for late registration. The director, therefore, denied the application on May 11, 2006.

On appeal, the applicant asserts that he arrived in the United States on or before November 5, 1998, and "subsequently, after a year in the United States I applied for Temporary Protected Status or TPS for the designated state of El Salvador." He further asserts that he is *prima facie*¹ eligible for TPS because he is a national of El Salvador, he arrived in the United States prior to February 13, 2001, and has since remained

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

physically and continuously in the United States since March 9, 2001, and that he has never been convicted of any crimes. The applicant contends that "the TPS case should have never been denied, but rather, it should have been approved pursuant to the above arguments due to the fact that I carried with the Immigration Service a previous relief of removal from a pending Adjustment of Status application."

The applicant's assertions, on appeal, are not persuasive. The applicant claims that he filed a TPS application a year subsequent to his arrival in the United States; however, no evidence was furnished to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, while the applicant claims that he is *prima facie* eligible for TPS, the director ultimately determined that the applicant was not eligible for TPS because he had failed to establish that he met the qualification for late registration described in 8 C.F.R. § 244.2(f)(2).

It is noted that the applicant, in response to the director's NOID dated March 15, 2006, submitted a statement from his mother [REDACTED] indicating that she and her two children (including the applicant), are beneficiaries of a Form I-130, Petition for Alien Relative, filed on their behalf by her [lawful permanent resident] husband and father of her children. A copy of the Form I-130, filed on April 23, 2001, is contained in the record.

The filing of a Form I-130, even if it were in fact approved, does not qualify for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). While the applicant asserts that he "carried with the Immigration Service a previous relief of removal from a pending Adjustment of Status application," the record 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.

The applicant has failed 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.

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.