



U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: DEC 11 2006

[WAC 05 223 71100]

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and 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 applicant filed initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number SRC 01 252 55562. The Director of the Texas Service Center denied that application on August 18, 2004, due to abandonment because the applicant failed to respond to a request for additional evidence dated May 11, 2004. The director informed the applicant that there is no appeal from a denial due to abandonment, but he could file a request to reopen the case within 30 days. The applicant did not file a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

A subsequent appeal from the director's decision was dismissed on May 3, 2006, after the Director (now Chief) of the AAO also concluded that the applicant had not been granted TPS, and was not eligible for re-registration. The Director noted that the applicant had not met the criteria for late initial registration described at 8 C.F.R. § 244.2(f)(2). The director also noted that the applicant had not established his identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1) or his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. § 244.2(b) and (c).

On motion to reopen, the applicant reasserts states that he has previously sent documents to establish his eligibility for TPS and he doesn't understand why his application has been denied. He further states that he is now the father of a United States citizen child whom he needs to support. Finally, the applicant states that he has "never had any trouble with the police."

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.

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.

Persons applying for TPS offered to 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. 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 period.

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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of the alien's passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

The applicant initially submitted only a translation of Salvadoran birth certificate to establish his identity and nationality.

On February 13, 2003, the applicant was requested to provide an official Salvadoran photo identification document and additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period. On May 11, 2004, the applicant was once again requested to provide an official Salvadoran identification document to establish his identity and nationality. The record does not contain a response from the applicant.

The director denied the applicant's initial TPS application due to abandonment on August 18, 2004, because the applicant failed to respond to the request for additional evidence.

On motion, the applicant provides a photocopy of the biographic page of his Salvadoran passport. Therefore, the applicant has established his identity and nationality, and the portion of the director's decision finding that the applicant failed to establish his identity and nationality will be withdrawn.

However, the applicant has once again failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as set forth at 8 C.F.R. § 244.2(b) and (c). The applicant has submitted only a photocopy of a mailing envelope with an illegible postmark and affidavits from his uncle and his cousin to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v). The applicant has also failed to establish his eligibility for late initial registration as set forth at 8 C.F.R. § 244.2f(2). Consequently, the previous decision of the AAO will be affirmed.

It is noted that the applicant's 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in January 13, 2006, and charged with driving on a revoked or suspended license and speeding over the statutory limit. This offense must be addressed in any further proceedings before CIS.

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.