



U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 04 098 53904]

OFFICE: VERMONT SERVICE CENTER

DATE: JAN 17 2006

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:



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, 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 had failed to submit evidence to establish that he was eligible for late registration, and that he is a national of El Salvador.

On appeal, counsel asserts that the director erred in her decision because the applicant had an asylum case and he is a national and citizen of El Salvador who has been living here since 1997.

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, 2006, 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 February 19, 2004.

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).

The first issue in this proceeding is whether the applicant has established that he is a national or citizen of El Salvador.

In a notice of intent to deny dated June 16, 2004, the applicant was requested to submit evidence to show that he is a national or citizen of El Salvador. The director noted that the applicant submitted only a copy of his birth certificate as proof of nationality. The applicant failed to respond to the director's request; therefore, the director denied the application on September 8, 2004.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

It is noted that the applicant furnished with his TPS application a copy of his El Salvadoran birth certificate with English translation, and a copy of New York State Learner Permit, with photograph affixed, issued to the applicant on September 15, 2003. On appeal, the applicant resubmits copies of his birth certificate and the learner permit.

Based on the applicant's birth certificate, with accompanying photo identification issued by the State of New York, it is concluded that the applicant has submitted acceptable evidence of his nationality and identity. Therefore, this finding of the director will be withdrawn.

The next issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. 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).

In a notice of intent to deny dated June 16, 2004, the applicant was requested to submit evidence to establish that he was eligible to register under the late initial registration provisions. The applicant failed to respond; therefore, the director denied the application on September 8, 2004.

On appeal, counsel asserts that the applicant is eligible for TPS because he had an asylum case.

The applicant's TPS application shows that the applicant claimed to have entered the United States without inspection near Houston, Texas, in October 1997. CIS records indicate that on May 3, 1995, the applicant's [REDACTED] filed Form I-589, Request for Asylum in the United States. The asylum application included the applicant's name, but shows that the applicant was not in the United States. On December 22, 1999, [REDACTED] filed her asylum application to include the applicant as her dependent in her asylum case, and indicating that the applicant arrived in the United States on May 22, 1997.

A review of [REDACTED] indicates that on December 22, 2000, [REDACTED] filed Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). On February 28, 2002, in New [REDACTED] was found eligible for NACARA suspension of deportation/special rule cancellation of removal, and she was granted adjustment of status to lawful permanent resident (LPR) under the classification of Z15. Also, on February 28, 2002, [REDACTED] withdrew her application for asylum. The request for withdrawal states, in part: "I also understand that withdrawing my asylum application means that I will not be able to take advantage of any benefits that might have resulted from a grant of asylum such as derivative asylum status for any of my dependents listed on the application." This statement was signed [REDACTED] on February 28, 2002.

Regulations at 8 C.F.R. § 244.2(f)(2)(iv) simply allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, these regulations do not relax the requirements for eligibility for TPS. Firstly, the applicant's mother was not a TPS registrant; secondly, her mother's asylum

application in which the applicant was a derivative, was withdrawn on February 28, 2002, during the initial registration period for El Salvadorans. However, the applicant's TPS application was not filed until February 19, 2004, after the initial registration period had closed.

Accordingly, 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 TPS application will be affirmed.

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.