



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JUL 20 2006**
[WAC 05 223 86186]

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:

[REDACTED]

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.

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 claims to be 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 failed to establish he was eligible for late registration.

On appeal, counsel for the applicant submits a brief and additional evidence.

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.
- (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 TPS application with Citizenship and Immigration Services (CIS) on May 11, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 20, 2005.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because he had a pending adjustment application

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on March 17, 1997, based on his parents' pending Form I-140 immigrant visa petition in order to obtain derivative benefits as the child accompanying or following to join a principal alien. On April 21, 1998, the applicant turned twenty-one (21) years of age. The principal alien was not adjusted to permanent residence at that time. Therefore, the District Director, Los Angeles, California, denied that application on April 22, 1998, because the applicant no longer met the definition of "child" and was no longer eligible for the benefit sought. The applicant does not qualify for late initial registration based on a pending adjustment application. His adjustment application was denied three years prior to the initial registration period for Salvadorans.

The record further reflects that the applicant and [REDACTED] United States citizen, were married in Huntington Park, California, on April 19, 2001. On April 30, 2001, Ms. [REDACTED] a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to qualify him as the spouse of a United States citizen. The District Director, Los Angeles, approved the petition on June 6, 2003. Although the record confirms that the applicant was the beneficiary of a pending immigrant visa petition during the initial registration period for Salvadorans, he cannot qualify for late initial registration on this basis. An alien cannot qualify for late initial registration based on a pending immigrant visa petition. 8 C.F.R. § 244.2(f)(2)(ii).

The applicant has not 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). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his identity and nationality as described at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

It is noted that the applicant's 2006 Federal Bureau of Investigation (FBI) fingerprint results report reveals that the applicant was arrested in Norwalk, California, on November 19, 2003, and charged with one count of contempt of court. This charge must be addressed in any future proceeding 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.