



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



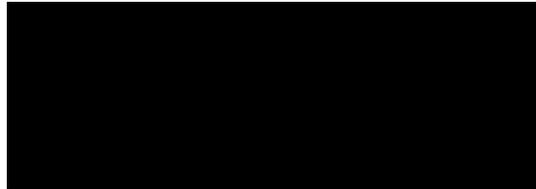
M1

FILE: 
[EAC 04 168 52665]

OFFICE: VERMONT SERVICE CENTER

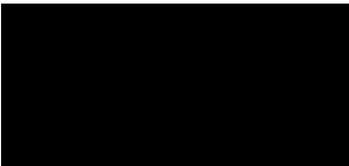
DATE: **JUN 05 2006**

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:



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, 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 failed to establish that he was eligible for late registration.

On appeal, counsel asserts the applicant's claim of eligibility for late registration.

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 application with Citizenship and Immigration Services (CIS) on May 14, 2004.

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 or she 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 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).

On June 21, 2004, 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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 9, 2005.

On appeal, counsel claims that the applicant was ill-advised and/or not advised by the Attorney General or his attorneys concerning his option to file a TPS application. Counsel also claims that the applicant's failure to file for TPS during the initial registration period and beyond was reasonable, beyond his control, and that there was a good cause for the late filing request. Counsel further claims that the applicant's voluntary departure date from the United States; stemming from his asylum hearing held on October 23, 2001, was scheduled for February 20, 2002.

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). Although counsel claims that the applicant was ill-advised and/or not advised of his option to file a TPS application within the requisite time period, there is no remedy available for an applicant who assumes the risk of authorizing an unreliable attorney or representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance filed against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). There is no evidence in the record of proceeding that

demonstrates an appeal of the immigration judge's decision based upon a lack of advice or ill-advice given to the applicant concerning his TPS claim.

The record shows that the applicant was before an immigration judge on October 23, 2001 for removal proceedings. At which time, the judge granted the applicant's application for voluntary departure until February 20, 2002. The judge also determined that the applicant's asylum application and withholding of deportation application were both to be withdrawn with prejudice. The applicant had 60 days from February 20, 2002 to file his TPS application. However, the record shows that the applicant filed his TPS application more than two years after the expiration or termination of the qualifying condition, and one and one-half years after the initial registration period ended on September 9, 2002. Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States from February 13, 2001 to May 14, 2004, the date of filing. For this additional reason, the TPS application will be denied.

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.