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**U.S. Citizenship  
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Services**

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FILE:

[Redacted]  
[SRC 04 001 53703]

Office: TEXAS 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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 after determining that the applicant had failed to establish his eligibility for late initial registration.

On appeal, counsel for the applicant submits a statement 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 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 section 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 conditions described in paragraph (f)(2) of this section.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 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 reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on September 18, 2003.

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 record of proceedings confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On January 25, 2003, the applicant was requested to submit photographs, and proof of having filed a TPS application during the initial registration period. In response, he submitted photographs. On September 23, 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, in response, submitted: his El Salvadoran national identity document issued in 1987; pay statements dated in February and March of 2001; utility billing statements dated in February 2001; and, CIS receipt notices.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 19, 2004.

On appeal, counsel states that the applicant was a derivative applicant on his mother's asylum application, but continued to receive employment authorization under the provisions for asylum when he turned 21 years of age, and no longer qualified as a child for immigration purposes. In his affidavit, the applicant states that after responding to the January 2003 request, and receiving no further decision, he sought assistance of counsel in July of 2003. He states that he then learned of his ineligibility to obtain employment authorization on the above-stated basis, and immediately filed the instant TPS application. In support of the appeal, the applicant submits photocopies of additional evidence consisting of: his Social Security card; Employment Authorization documents (EAD) under Category C08, with validity through August 24, 2002, and for prior years; CIS receipt notices for his employment authorization applications dated between 1996 and 2001; and, the Permanent Resident Card of his mother, who received permanent residence on September 4, 2002, under the NACARA program.

Review of the record reveals that the applicant filed an application for employment authorization on June 14, 2002, during the initial registration period for El Salvadorans, requesting authorization under the TPS program Category A12. The applicant states that he did not at that time file a Form I-821, because he was under a good faith belief that he was entitled to receive employment authorization on the basis of his mother's asylum application. The record contains a letter dated January 20, 1999, from the Director, Houston Asylum Office, addressed to the applicant's mother, informing her that the applicant had attained the age of 21, was not eligible to be included as a derivative applicant on her asylum application, and must file his own asylum application if he intended to pursue asylum. The record does not contain an individual asylum application filed by the applicant. The record further reflects that the applicant continued to receive employment authorization under the category designated for those with pending asylum applications through August 24, 2002. The applicant received a notice "Administrative Termination" of his Form I-589, Request for Asylum

in the United States, pending since February 6, 1996, on September 5, 2002. The applicant did not file his initial TPS application until September 18, 2003.

Under the circumstances described, it is reasonable that the applicant considered himself to have a pending asylum application until September 5, 2002, the date of the Administrative Termination of his Form I-589. It is noted, however, that the initial registration period for El Salvadorans continued through September 9, 2002, subsequent to the date his asylum application was terminated. Even if it is allowed that the applicant met one of the conditions for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii), the applicant is required to file his TPS application within 60 days of the termination or expiration of the condition that made him eligible for late initial registration. 8 C.F.R. § 244.2(g). The applicant did not file his TPS application until September 18, 2003. The applicant has not established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). 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.