



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: MAY 15 2006

[SRC 03 258 54460]

IN RE:

Applicant:



APPLICATION:

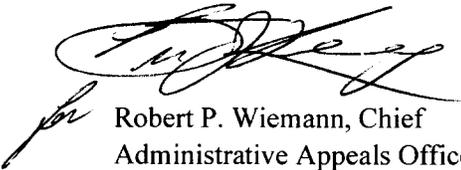
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for 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 because the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence 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 validity of the latest extension 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 15, 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).

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).

With his initial application, the applicant submitted: his El Salvadoran cedula, with English translation; his El Salvadoran License issued on February 3, 1999; his El Salvadoran passport issued in El Salvador on June 12, 2000; a passport page reflecting a United States B1/B2, nonimmigrant visitor visa, with validity from July 5, 2000 through July 2, 2010; his State of Texas driver's license issued in 2001; Western Union money transfer receipts dated in 2001; uncanceled checks made payable to the applicant dated in 2003; payroll statements dated in 2002 and 2003; and, affidavits from acquaintances attesting to his residence in the United States.

On August 27, 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 was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted additional affidavits and letters from employers and acquaintances attesting to his character and his presence in the United States, and resubmitted some of the documentation that had previously been entered into the record.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 25, 2004.

On appeal, the applicant states that he cannot stress the importance of obtaining TPS status for his family's support. He states that he understands that the denial of his application was "based [o]n the fact that [he] failed to respond in a timely manner to [the] Intent to Deny dated on August 27, 2004." He asserts that he did in fact respond to the request in a timely manner. He states that he has been continuously physically present and continuously residing in the United States during the required timeframes. He does not submit any additional evidence in support of the appeal.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant states that he believes the denial of his application was due to his failure to timely respond to the notice of intent to deny; this, however, is incorrect. The denial was based on the applicant's failure to file his initial TPS application during the initial registration period that for El Salvadorans was from June 19, 2001, through September 9, 2002. The applicant indicated on his Form I-821 that he entered the United States legally with a B-2, nonimmigrant visitor's visa. Although the applicant submitted a copy of a United States B1/B2, nonimmigrant visitor visa, with validity from July 5, 2000 through July 2, 2010, he did not submit a Form I-94, Arrival/Departure Record, or any other evidence of having actually used the visa to enter the United States, and of maintaining lawful status through the filing date of his TPS application, or of having filed his TPS application within 60 days of the termination or expiration of any lawful nonimmigrant status he may have had. 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) and (g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical

presence in the United States since March 9, 2001. Therefore, the applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is noted that the record reflects that the applicant was previously under immigration proceedings in the United States, following his apprehension by the United States Border Patrol after his claimed entry into the United States at or near El Paso, Texas, on or about October 30, 1980. The record contains an Order of the Immigration Judge, Los Angeles, California, dated June 10, 1981, granting the applicant voluntary departure to El Salvador to be effected on or before June 25, 1981. The record indicates that the applicant returned to El Salvador on June 12, 1981.

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.