



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 09 2006**

[EAC 04 121 51414]

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, 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 establish that he was eligible for late registration.

On appeal, counsel 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 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 application on March 1, 2004.

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).

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 record indicates that the applicant did file an initial application for TPS during the initial registration period on April 15, 2002 (EAC 02 164 50458). The director denied that application on May 7, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting. The record contains Form I-797, Notice of Action, indicating that on December 3, 2003, the director returned to the applicant the Form I-290A Appeal, Motion to Reopen or Reconsider, advising the applicant that the "attached Motion/Appeal must be filed with the Service Center where the initial application/petition was denied. The underlying receipt denial number must be indicated on the Motion to Reopen/Reconsider or I-290B Notice of Appeal. Please make sure your check or money order is made payable to CIS." The record of proceeding does not contain evidence that the applicant ultimately refiled the Motion to Reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 1, 2004, and indicated that this is his "first application to register for Temporary Protected Status."

In a notice of intent to deny dated May 11, 2004, the applicant was requested to submit evidence to establish that he was eligible to register under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2). He was also requested to submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

In his denial decision dated September 3, 2004, the director maintained that the applicant was requested to show that he is a citizen or national of Honduras or Nicaragua, and to submit evidence to show that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999.¹ It is noted that the applicant, in response, furnished copies of documents addressing continuous residence and continuous physical presence in the United States. The director denied the application after determining that the applicant had failed to provide any evidence to establish his eligibility for late initial registration.

On appeal, counsel asserts that the applicant is a citizen of El Salvador, and submits a copy of the applicant's El Salvadoran passport to support his claim. Counsel also submits additional documentation as evidence that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

The applicant, however, 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 TPS application on this ground will be affirmed.

Beyond the decision of the director, it is noted that the applicant indicated on his initial TPS application that he had been arrested on "01-29-200 [sic], 09-16-2001, and 12-03-2001." The final court dispositions of these arrests are not included in the record of proceeding, nor is there evidence that the applicant was requested to submit the court dispositions of all of his arrests. CIS must address these arrests and/or convictions in any future decisions or proceedings.

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.

¹ The applicant is a national of El Salvador. The director erroneously referred to the applicant as a national of Honduras or Nicaragua, and cited the dates Hondurans and Nicaraguans are required to establish continuous residence and continuous physical presence.