



U.S. Citizenship
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Services

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FILE:



[EAC 04 080 52333]

Office: VERMONT SERVICE CENTER

Date: MAY 30 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:

Self-Represented

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 (VSC), 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 his eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that on May 7, 2001, while residing in Georgia, the applicant filed an initial TPS application, during the initial registration period, under CIS receipt number SRC 01 204 54156. The Texas Service Center (TSC) Director denied that application due to abandonment on February 28, 2003, because the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. The record reflects that both the notice of intent to deny dated December 20, 2002, and the denial decision dated February 28, 2003, were mailed to the applicant's address as provided on his September 12, 2002, applications for renewal of temporary treatment benefits. The record indicates that the applicant did not provide a change of address form, or provide a new address until his January 12, 2004, application in which he indicated he had moved to Maryland. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision.

The applicant filed this subsequent Form I-821, Application for Temporary Protected Status, on January 12, 2004. The VSC Director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits. If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

Because the applicant's initial Form I-821 was denied by the TSC Director on February 28, 2003, this January 12, 2004, application cannot be considered as a re-registration, but can only be considered as an application for late initial 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 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 this TPS application with Citizenship and Immigration Services (CIS), on January 12, 2004.

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 his 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 April 6, 2004, the VSC Director requested the applicant to submit additional evidence establishing his: eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2); nationality; continuous residence in the United States since February 13, 2001; and, continuous physical presence in the United States since March 9, 2001. In response, the applicant stated that he was not applying late because he had, in fact, applied for TPS during the initial registration and was unaware that his TPS application had previously been denied. He stated that he had not received either the notice of intent to deny or the denial notice. In support of the appeal, he resubmitted documentation that had been submitted with his initial application. He also submitted photocopies of: the certified mailing receipt for his May 2001 TPS application; the fingerprint fee receipt for his 2001 application; the CIS receipt notice for his 2001 TPS application; and, a fingerprint worksheet date stamped as completed on March 19, 2003.

The director determined that the applicant had failed to establish his eligibility for late initial registration and denied this application on October 15, 2004.

On appeal, the applicant reiterates that he does not understand the reason for the denial of his TPS application, because he had applied for TPS in 2001. In support of the appeal, the applicant resubmits evidence that had previously been entered into the record.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States, and demonstrated that he had previously applied for TPS during the initial registration period. As discussed above, although the applicant had filed an application during the initial registration period, that application was denied due to abandonment and this application must be considered as an application under the provision of late initial registration. It is noted that the address provided on the applicant's September 12, 2002, application for extension of temporary treatment benefits and the address he provided on his fingerprint worksheet date stamped as completed on March 19, 2003, submitted on appeal, indicate the same address to which both the notice of intent to deny and the denial notice were mailed. 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 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.