



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 16 2006

[REDACTED] consolidated herein]

[WAC 05 125 78774]

IN RE:

Applicant

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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, California 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 record reveals that the applicant filed an initial TPS application on January 17, 2003, under Citizenship and Immigration Services (CIS) receipt number WAC 03 089 51490. The director denied that application on June 4, 2003, because the applicant had failed to register in a "timely manner." It is noted that prior to the director's denial decision, a notice of intent to deny dated February 27, 2003, was issued requesting that the applicant submit evidence to establish: (1) continuous residence in the United States since February 13, 2001; (2) continuous physical presence from March 9, 2001, to the date of filing the application; and (3) that he was eligible for late initial registration as provided in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted a copy of a TPS application mailed on November 12, 2002 (after the initial registration period had closed), and a copy of a receipt issued on June 29, 1991, for receipt of Forms I-104 (Alien Address Report Card) and I-765 (Application for Employment Authorization). The applicant neither addressed nor submitted evidence of his residence and physical presence and evidence to establish eligibility for late registration; therefore, the director denied the initial application on June 4, 2003. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 2, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)." The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the director's decision is factually and legally incorrect. He states that the applicant was not applying for "re-registration" but, rather, for "late initial registration." He further states that throughout the initial registration period from March 9, 2001 through September 9, 2002, his asylum application and application for relief from removal (Form I-881, NACARA) were pending. Accordingly, this application will be treated as the applicant's "first application" to register for TPS.

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, 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 shows that the applicant filed his application on February 2, 2005.

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).

A review of the record indicates that on January 29, 1990, the applicant filed Form I-589, Request for Asylum in the United States. An Order to Show Cause and Notice of Hearing, Form I-221, was issued on October 17, 1989, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about March 6, 1989. In removal proceedings held on October 15, 1990, the applicant was granted voluntary departure on or before April 15, 1991. Because the applicant failed to depart as required, a Warrant of Deportation, Form I-205, was issued on July 19, 1993. On August 24, 1999, the applicant filed Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). This application was housed in a different CIS file created for the applicant under file number A71 621 023. Also contained in this second file is another Form I-589 asylum application received on October 29, 1990, and another Form I-221 issued on May 11, 1992, at Fresno, California. The two files were subsequently consolidated on December 9, 2003.

The record indicates that Form I-589, Request for Asylum in the United States, and Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (NACARA), were denied on October 19, 2004. While 8 C.F.R. § 244.2(g) allows the applicant a 60-day period immediately following the expiration or termination of condition, in this case, after the asylum application NACARA application were denied, to file a TPS application for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file his TPS application until February 2, 2005.

The applicant has failed to establish that he has met the requirements of 8 C.F.R. § 244.2(f)(2)(ii), or any of the other 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.

The Federal Bureau of Investigation fingerprint results report shows that on January 4, 1990, in Reedley, California, the applicant, under the name of [REDACTED], was arrested for theft. The record shows that on December 9, 2003, the applicant was requested to submit the final court disposition of this arrest. The applicant responded by submitting a letter from the City of Reedley Police Department indicating that the department no longer has on file "Case Number 90-23" involving [REDACTED] because pursuant to the department's destruction policy and procedures, reports are only kept on file for five years. The destruction of records, however, is not evidence that conviction(s) had been dismissed. Further, it is noted that the applicant failed to submit the final disposition of this arrest from the court where the hearing took place. CIS must address this arrest and/or conviction 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.