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U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 26 2006

[SRC 03 222 54101]

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, 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 he was eligible for late registration.

On appeal, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence 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 August 8, 2003. It is noted that the applicant checked the box indicating that this was an application for re-registration, and that TPS had previously been granted. The record, however, does not include an earlier application for TPS, and the applicant did not submit any evidence of having filed an earlier TPS application. Therefore, this must be considered as an application for late registration.

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).

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).

On November 17, 2003, 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 photocopies of: receipt notices for Employment Authorization applications dated yearly from 1998 through 2002, under Category C8 (asylum applicants); a Notice of Hearing in Removal Proceedings dated August 7, 1998; and, his Employment Authorization Cards from January 8, 1998, through March 11, 2003, valid under Category C8.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 15, 2003.

On appeal, the applicant states that he has had an asylum case pending over the past five or more years. The applicant states that he has never received any documentation indicating that his pending asylum had been denied. He states that he applied to renew his employment authorization prior to its expiration in March 2003, and then applied for TPS when that renewal did not arrive. He submits photocopies of his employment authorization cards valid under Category C8.

The record reflects that the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation on October 25, 1993. The applicant was interviewed on March 12, 1998, found ineligible for asylum, and was subsequently referred to an Immigration Judge. The Order of the Immigration Judge, Miami, Florida, dated December 3, 1998, denied asylum and withholding of deportation. Counsel for the applicant, reserved appeal and on April 19, 1999, filed a brief in support of the appeal to the decision of the Immigration Judge with the Board of Immigration Appeals (BIA), Fairfax, Virginia. The decision of the BIA is not included in the record of proceedings. However, the records of CIS reflect that the BIA entered a decision on June 26, 2001, that is indicated as "TPS NOT R/O."

The record reflects that during the initial portion of the initial registration period, the applicant had a pending application for asylum, and therefore, met one of the conditions described in 8 C.F.R. § 244.2(f)(2)(ii). However, the applicant did not file his application for TPS until August 8, 2003, more than 60 days after the decision of the Board of Immigration Appeals on June 26, 2001. He therefore, has not established that he has met the requirement under 8 C.F.R. § 244.2(g), which states that 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. 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 also failed to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The record contains a State of Florida Driver License issued on October 29, 1998, with notation that a duplicate was issued on June 21, 2000. The record also includes receipt notices, copies of employment authorization cards, and documentation relating to the asylum application dated between October 1993 and June 1999. The applicant, however, has not submitted any of the evidence specified at 8 C.F.R. § 244.9(a)(2) that may establish continuous residence and continuous physical presence in the United States for the requisite periods. He has, therefore, also failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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.