



U.S. Citizenship
and Immigration
Services

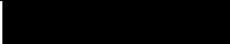
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FILE:



Office: TEXAS SERVICE CENTER

Date: **SEP 29 2006**

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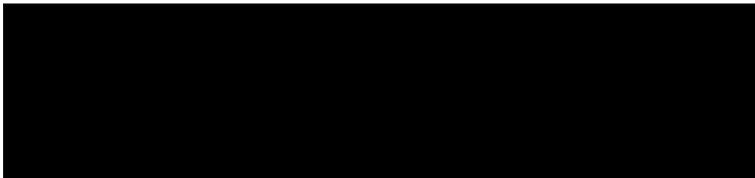
IN RE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, (TSC), and is now before the Administrative Appeals Office on appeal. The case will be remanded

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 he was eligible for late initial registration.

On appeal, counsel states that the applicant filed his application during the initial registration period and argues that his Form I-821, Application for Temporary Protected Status, was mailed along with his Form I-765, Application for Employment Authorization. Counsel submits a Form I-797C, Receipt Notice, dated October 15, 2002 showing that the applicant's Form I-765 application was received by CIS on September 9, 2002. Counsel also submits a U.S. Postal Service Form 3800, Certified Mail Receipt, showing the applicant mailed article number [REDACTED] on September 7, 2002 from Houston, Texas, and U.S. Postal Service Form 3801, Domestic Return Receipt, bearing a stamp (but no signature) showing the article was received by the TSC on September 10, 2002. Counsel argues that as the applicant filed during the initial registration period, his application for TPS should be re-adjudicated.

Section 244(c) of the Act, and the related regulations at 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The Secretary of the Department of Homeland Security has granted an extension of the TPS designation with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

On appeal, counsel states that the applicant filed his application during the initial registration period and argues that his Form I-821, Application for Temporary Protected Status, was mailed along with his Form I-765, Application for Employment Authorization. Both applications could not have been sent together in article number [REDACTED] (the article) on September 7, 2002 from Houston, Texas. U.S. Postal Service Form 3801, Domestic Return Receipt bearing a stamp (but no signature) showing the article was received by the TSC on September 10, 2002. However, the Form I-797C, Receipt Notice dated October 15, 2002 submitted by counsel shows that the applicant's Form I-765 application was received by CIS on September 9, 2002, one day prior to the article being received at TCS. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

If the applicant's Form I-821 was in the article, it was received after the initial registration period for El Salvadorans as that period was from March 9, 2001 through September 9, 2002, but the Form 3801 was stamped as being received by the TSC on September 10, 2002.

The record reflects that the applicant properly filed his initial application with Citizenship and Immigration Services (CIS), on September 11, 2003. The applicant attempted to file for TPS on August 18, 2003; however, the application was rejected and returned to him on August 22, 2003 because he had not submitted the proper fee. The applicant was informed that no evidence was provided with his re-registration application to demonstrate that he had previously filed for TPS, and a search of CIS systems did not indicate he had filed initial I-821 and I-765 applications. The applicant was requested to provide such evidence.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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 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).

On December 22, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided a copy of the first page of his Form I-589, Request for Asylum in the United States, and copies of his identity documents including his El Salvadorian passport and national identification card, his birth certificate with an uncertified translation and his Texas driver's license.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 16, 2004.

The record indicates that the applicant first entered the United States without inspection near San Ysidro, California, on August 1, 1989. He filed a Form I-589, Request for Asylum in the United States, on November 13, 1996. The applicant was sent a referral notice indicating that his asylum request could not be granted because: "You failed to appear for your scheduled asylum interview, or failed to provide a competent interpreter, and did not show good cause." His case was then referred to an Immigration Judge. On April 16, 1997, the applicant's case was administratively closed because CIS had failed to demonstrate proper service of an order to show cause on the applicant. On May 12, 1997, an Immigration Judge in Los Angeles, California issued an order terminating the applicant's deportation proceedings without addressing his asylum claim.

In this case, the record establishes that the applicant meets the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) because his asylum claim remains undecided. Therefore, this finding of the director will be withdrawn.

Although not addressed by the director, the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2 (b) and (c). Although the record shows that he entered the United States on August 1, 1989, he was in El Salvador when his passport was issued on January 29, 2002 and on January 28, 2002 when his El Salvadoran national identity card was issued in his home country. Therefore, the case shall be remanded to the director. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action.