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U.S. Citizenship
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APR 13 2007

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

[WAC 05 215 71242]

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be remanded for the entry of a new decision.

The applicant claims to be a 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 on the ground that the applicant failed to establish that he was eligible for late registration in accordance with the regulations at 8 C.F.R. § 244.2.

On appeal, counsel asserts that the applicant is eligible for late registration on the basis of a pending asylum application, and that he meets the other requirements for TPS.

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 TPS 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 who are El Salvadoran nationals must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 regulations at 8 C.F.R. § 244.17 set forth the procedure for annual TPS re-registration. They provide, in pertinent part as follows:

- (a) Aliens granted Temporary Protected Status must register annually with the [Citizenship and Immigration Services (CIS)] designated office having jurisdiction over their place or residence Reregistration may be accomplished by mailing or submitting in person . . . completed Forms I-821 and I-765 within the thirty (30) day period prior to the anniversary of the grant of Temporary Protected Status . . .
- (c) Failure to register without good cause will result in the withdrawal of the alien's Temporary Protected Status.

The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Vermont Service Center (VSC) on June 11, 2001. The application [EAC 01 208 52630] was approved by the VSC on August 10, 2001, and was valid until September 9, 2002. After that initial grant of TPS the applicant did not reregister for TPS annually in accordance with the provisions of 8 C.F.R. § 244.17. Though Citizenship and Immigration Services (CIS) could have withdrawn the applicant's TPS as a result of the failure to reregister, it did not do so.

On May 3, 2005, the applicant filed his current TPS application with the California Service Center (CSC). On May 24, 2006, the director denied the application on the ground that the applicant failed to establish that he was eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2) and (g). The director neglected to note, however, that the applicant had been granted TPS during the initial registration period, and that CIS had not withdrawn that status despite the applicant's failure to reregister annually. Since the applicant's TPS had not been withdrawn, the basis of the director's decision – failure to establish eligibility for late registration – was incorrect.

Therefore, the case will be remanded to the director for the entry of a new decision. The applicant must establish that he meets the other eligibility criteria for TPS enumerated in 8 C.F.R. § 244.2(a) to (e).

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

ORDER: The director's decision of May 24, 2006, is withdrawn. The case is remanded to the director for further action consistent with the above and the entry of a new decision.