

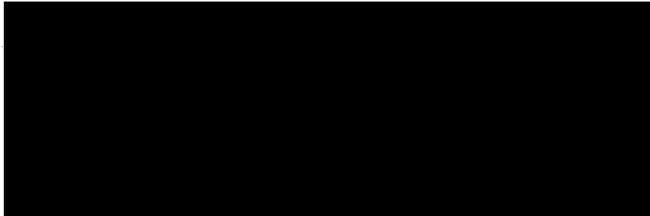
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FILE:



[EAC 05 208 73957]

OFFICE: Vermont Service Center

DATE:

AUG 14 2007

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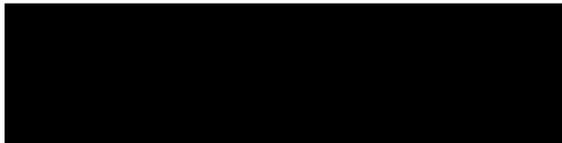
Applicant:



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, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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 grounds that the applicant failed to establish that he was eligible for late TPS registration, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States from March 9, 2001, to the date his TPS application was filed.

On appeal the applicant asserts that he is eligible for late TPS registration by virtue of an asylum application that was pending during the initial registration period, that he meets the requirements of continuous residence and continuous physical presence in the United States from the applicable dates in February and March 2001, and that the evidence he has submitted is credible and consistent.

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 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.

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.

El Salvadoran nationals applying for TPS 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. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on February 24, 2005 – nearly two and one-half years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions 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 Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On January 4, 2006, the VSC Director requested the applicant to submit evidence that he was eligible for late registration, that he has been a resident of and physically present in the United States since the applicable dates in February and March 2001 for TPS applicants from El Salvador, as well as evidence of his national identity and an explanation for the prior submission of documentation with two different social security numbers. The director noted that the applicant, who entered the United States without inspection in 1992, had filed an asylum application which was denied on August 18, 1998. The applicant responded with photocopies of the biographic page of his El Salvadoran passport, issued by the Consulate General in Miami, Florida, on September 13, 2001,

an Application for Employment Authorization dated March 10, 2001, as well as data from his Form W-2, Wage and Tax Statements, for the tax years 1999, 2001, and 2002.

On June 27, 2006, the director denied the application for TPS on the grounds that the applicant, while establishing his national identity, failed to establish that he was eligible for late TPS registration, that he had been a continuous resident of the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001, and also failed to provide a sworn statement explaining the appearance of two different social security numbers in his documentation of record.

On appeal the applicant submits a sworn affidavit identifying his correct social security number and stating that he has never used another number. He also submits a photocopy of his social security card which confirms the number indicated in his sworn statement. A review of the record shows that the other social security number referenced in the director's request for evidence and decision appears on a 2001 Form W-2, Wage and Tax Statement, for another individual by the name of [REDACTED] whose employer and home address were different from the applicant's in 2001. The applicant has not explained where he obtained or why he submitted that document, which accompanied the TPS application he filed at the VSC in 2005. Nevertheless, he does appear to have clarified which social security number is his.

The applicant asserts on appeal that he had an asylum application pending during the initial registration period for El Salvadoran nationals – March 9, 2001 to September 9, 2002 – making him eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). As previously discussed, however, CIS records show that the applicant's asylum application (Form I-589), filed on October 14, 1993, was terminated by an Immigration Judge in Miami, Florida, on August 18, 1998. The applicant was ordered removed to El Salvador, but did not show up for his scheduled deportation on April 22, 1999. The applicant filed a motion to reopen his removal proceedings on April 23, 2007, which was denied by an Immigration Judge in Miami, Florida, on July 3, 2007. Thus, the record clearly shows that the applicant did not have an application for asylum, or relief from removal, that was pending or subject to further review or appeal during the initial registration period for El Salvadoran nationals, March 9, 2001 – September 9, 2002. The applicant has submitted no evidence to establish that he meets any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Accordingly, the director's denial of the application for TPS on this ground will be affirmed.

Furthermore, the applicant has submitted no further evidence on appeal that he meets the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The only evidence of his continuous residence and physical presence from February and March 2001 onward are the previously discussed Forms W-2 for the tax years 1999, 2001, and 2002, and the Application for Employment Authorization, dated March 10, 2001, which CIS records show was approved for a one-year validity period running from May 9, 2001 to May 9, 2002. The applicant has not submitted any of the other documentation suggested in the request for evidence. If the applicant has been in the United States continuously from the 1990s up to the present, as he claims, it is reasonable to expect that he would have more contemporaneous documentation. The AAO concludes that the applicant has failed to establish that he has been continuously physically present in the United States since March 9, 2001, and continuously physically present in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's denial of the application will also be affirmed on these grounds.

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 TPS 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 that burden.

ORDER: The appeal is dismissed.