



U.S. Citizenship  
and Immigration  
Services

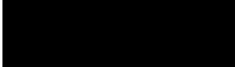
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 27 2007

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IN RE:

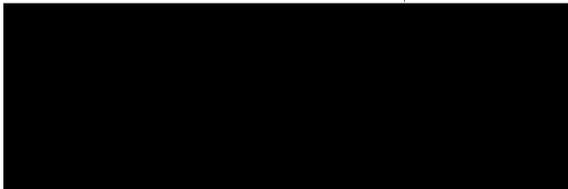
Applicant:



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.

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC), 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 a TPS application during the initial registration period on October 20, 2001, under receipt number SRC 02 037 57475. The Director, Texas Service Center (TSC), denied that application on November 4, 2004, because the applicant had failed to submit evidence to establish that he had continuously resided in the United States since February 13, 2001. The TSC director noted that the applicant's Form I-821 TPS application clearly states that he arrived in the United States on May 22, 2001.

The applicant appealed the director's decision to the AAO on December 13, 2004. The AAO rejected the appeal on February 2, 2006, because the appeal was untimely filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 10, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 5, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the decision is erroneous because the applicant has applied and has been granted TPS since the program's inception. He submits copies of Employment Authorization Cards (EAD) issued on August 4, 2003 (under category C19), and on June 1, 2005 (under category A12).

The fact that the applicant was issued EADs is not evidence that he was approved TPS. Based upon filing of the I-821 applications for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility<sup>1</sup> for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS. It is noted, however, that despite the denial of the applicant's TPS applications on November 4, 2004, and on January 5, 2006, Employment Authorization Cards were continuously issued to the applicant. In *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent. The Service is not required to approve applications or petitions where eligibility has not been demonstrated. See *Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952).

The applicant is filing the current TPS application as a re-registration; therefore, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the applicant has not overcome the reasons for the initial denial.

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<sup>1</sup> Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

The applicant indicated on his initial TPS application (Form I-821) and subsequent re-registration applications and applications for employment authorization (Form I-765) dated and signed by the applicant on October 1, 2001, on December 2, 2002, and on July 18, 2003, that his date of entry into the United States was May 22, 2001. Additionally, Form I-862 (Notice to Appear) dated May 31, 2001, and Form I-200 (Warrant for Arrest of Alien) dated May 31, 2001, both indicate that the applicant entered the United States near Douglas, Arizona, on May 22, 2001. In removal proceedings held on August 12, 2004, at Los Angeles, California, the immigration judge noted that the applicant entered the United States on May 22, 2001.

The applicant was not present in the United States during the period required to establish eligibility. Therefore, he could not have met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant is suspect. Additionally, it is noted that the applicant now claims on his re-registration application filed on March 10, 2005, that his date of entry into the United States was in January 2001. Counsel also submitted, on appeal, copies of Form I-821 and Form I-765 (received at the Vermont Service Center on August 14, 2006) both indicating that his date of entry into the United States was January 15, 2001.

An applicant raises questions of credibility when asserting a substantially revised claim to eligibility. The applicant has submitted no evidence, on appeal, in support of the new claim. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record shows that on October 6, 2005, in El Paso, Texas, the Immigration Judge administratively closed removal proceedings.

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.