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[EAC 06 364 78640]

OFFICE: Vermont Service Center

DATE:

AUG 27 2007

IN RE:

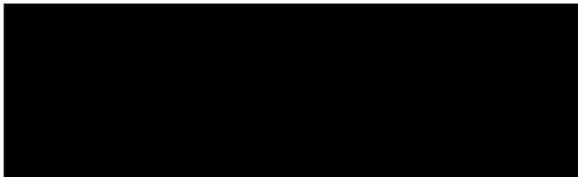
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 grounds that the applicant failed to establish his eligibility for late TPS registration, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal counsel asserts that the applicant is eligible for TPS derivatively through his father.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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).

The record indicates that the applicant was born in Nicaragua on July 2, 1988, entered the United States without inspection on September 20, 2004, and filed his initial Form I-821, Application for Temporary Protected Status, on September 29, 2006 – four years after the close of the initial registration period for El Salvadoran nationals. On December 14, 2006, the VSC Director requested the applicant to submit evidence that he met the requirements for late registration, evidence of his national identity, as well as evidence of his continuous residence in the United States since February 13, 2001, and continuous physical presence in the country since March 9, 2001. No response was received from the applicant.

On February 5, 2007, the director denied the application on the grounds that the applicant failed to establish the his eligibility for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2); and failed to establish his continuous physical presence in the United States since March 9, 2001, and continuous residence in the United States since February 13, 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act.

On appeal counsel asserts that the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) because during the initial registration period (in 2001-2002) he was the minor child of an alien currently eligible for TPS – namely, his father, ██████████. Citizenship and Immigration Services (CIS) records confirm that ██████████ was granted employment authorization – valid from August 13, 2001 to September 9, 2002 – based on an application for TPS filed during the initial registration period for El Salvadoran nationals. The record is unclear as to whether ██████████'s application for TPS was approved. Even if it was, however, a late-filing child of a TPS-eligible parent must meet the same continuous residence and continuous physical presence requirements as the parent to be eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv). Since the applicant did not enter the United States until September 20, 2004, he was not continuously physically present in the United States since March 9, 2001, nor a continuous resident of the United States since February 13, 2001, as required for all TPS applicants from El Salvador under section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant is ineligible for late TPS registration regardless of his father's eligibility. The director's denial of the application will be affirmed on these grounds.

Beyond the decision of the director, the applicant failed to furnish the requested national identity document with photo identification. For this additional reason the application for TPS must be denied.

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.