



U.S. Citizenship
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FILE:



OFFICE: Vermont Service Center

DATE: **AUG 31 2007**

[EAC 06 322 76570]

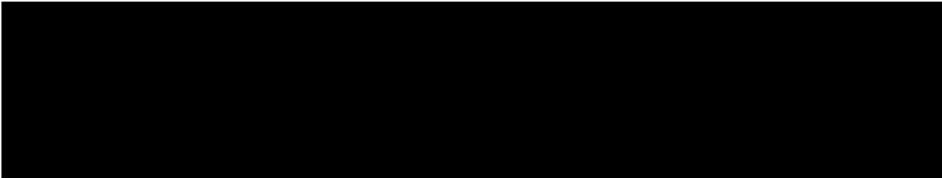
IN RE:

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, 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 and that he met the continuous residence and continuous physical presence requirements for El Salvador nationals.

On appeal counsel asserts that the applicant registered for TPS during the initial registration period, and that the director failed to consider the evidence in the record of the applicant's continuous residence and physical presence in the United States and did not afford the applicant the opportunity to submit new evidence.

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.

- (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.

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 the application currently on appeal before the AAO on August 4, 2006 – nearly four 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 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 applicant filed his initial TPS application [WAC 04 007 53505] at the California Service Center (CSC) on September 23, 2003 – a year after the close of the initial registration period for TPS applicants from El Salvador. On February 27, 2004, the CSC Director denied the application on the ground that it had not been registered in a timely manner. The applicant appealed, but the CSC Director rejected the appeal because it was not filed within the 33-day period prescribed in the regulations. On February 4, 2005, the applicant filed an application with the CSC to re-register for TPS [WAC 05 127 78261]. It was denied by the CSC Director on October 6, 2005, on the

ground that the initial TPS application had been denied, which made the applicant ineligible to re-register for TPS. The applicant filed a timely appeal, but it was dismissed by the AAO on August 21, 2006, for failure to overcome the ground of denial.

The applicant filed the current TPS application [EAC 06 322 76570] with the VSC on August 18, 2006. Treating it as a late initial application for TPS, in accordance with the designation by the applicant on the Form I-821, the VSC Director denied it on April 6, 2007, on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he was continuously resident and continuously physically present in the United States from the dates applicable for TPS residents from El Salvador.

On appeal counsel asserts that the VSC Director committed a legal error in finding that the applicant is not eligible for late initial registration because the record shows that the applicant registered for TPS during the initial registration period. Counsel cites a recent decision of the Board of Immigration Appeals, *Matter of Barrientos*, 24 I&N 100 (BIA 2007), for the proposition that an application for TPS is an application for relief from removal. Counsel also asserts that the director failed to consider the evidence already in the record of the applicant's continuous residence and continuous physical presence in the United States, and did not afford the applicant a fair opportunity to present new evidence of his residence and physical presence in the United States.

Counsel's arguments have no merit. The VSC Director committed no legal error with regard to the applicant's eligibility for late initial registration because the record clearly shows that the applicant's earliest TPS application was filed on September 23, 2003 – a year after the close of the initial registration period for El Salvadoran nationals on September 9, 2002 – and there is no evidence in the record that the applicant is eligible for late TPS registration under any of the criteria enumerated 8 C.F.R. § 244.2(f)(2). The citation to *Matter of Barrientos* is misplaced since that decision simply states that an alien may assert a right to TPS during removal proceedings before an Immigration Judge, even if his TPS application has previously been denied by the AAO. While counsel contends that the director failed to consider previously submitted evidence of the applicant's residence and physical presence in the United States, the only such evidence in the record is a single letter from a church pastor in Mendota, California, dated September 14, 2003, stating that the applicant had been a member of the parish since February 13, 2001. Letters from acquaintances are not, by themselves, persuasive evidence of residence or physical presence in the United States. If the applicant has lived in the United States since January 2001, as he claims, it is reasonable to expect that he would have some contemporaneous documentation. Simply going on record without supporting documentation does not satisfy the applicant's burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Though counsel complains that the applicant was not given the opportunity to submit additional evidence, the applicant had ample opportunity in the course of his two prior TPS applications, as well as on appeal in the current proceedings, to supplement his evidence of residence and physical presence in the United States by submitting the types of documentation enumerated in 8 C.F.R. § 244.9(a)(2).

Thus, the applicant has failed to establish that he filed for TPS during the initial registration period or is eligible for late registration under any of the criteria enumerated in 8 C.F.R. § 244.2(f)(2), and has failed to establish that he has been continuously physically present in the United States since March 9, 2001, and a continuous resident of the United States since March 13, 2001, as required for El Salvadoran nationals under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be affirmed.

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.