



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE: DEC 28 2007

[WAC 05 215 78957]

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: Self-represented

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). 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 applying for 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 provide evidence that he was eligible for late registration and that he met the requirements for continuous residence and continuous physical presence in the United States.

On appeal the applicant asserts that he is eligible for late TPS registration through his wife and has been in the United States since 1999, thereby meeting the continuous residence and continuous physical presence requirements for El Salvadorans. Additional documentation is submitted in support of these claims.

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 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 that they have continuously resided in the United States since February 13, 2001, and been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant, who claims to have entered the United States on May 10, 1999, filed his initial Form I-821, Application for Temporary Protected Status, on March 3, 2005 – 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 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).

On June 20, 2006, the director issued a notice of intent to deny (NOID), in which he requested the applicant to submit evidence of his eligibility for late registration, his nationality/identity, and his continuous residence and physical presence in the United States since the applicable dates in February and March 2001, as well as two passport-style photographs and the final court disposition(s) for any arrest(s) in the United States. The applicant responded with some, but not all, of the requested documentation.

On September 16, 2006, the director denied the application on the grounds that the applicant failed to provide any evidence of his eligibility for late TPS registration, and that the documentation submitted to show the applicant's residence and physical presence in the United States covered only the years 1999-2001, and therefore did not establish the applicant's continuous residence and continuous physical presence in the United States from the applicable dates in February and March 2001 up to the present time.

On appeal, the applicant asserts that he is eligible for late registration through his wife, [REDACTED] and submits photocopies of their marriage certificate, showing that they were married in El Salvador on February 21, 1998, and an Employment Authorization Card issued to his wife indicating that it was based on her approval for TPS. CIS records confirm that the applicant's wife filed her initial TPS application on December 27, 2001, was approved on February 14, 2003, and has maintained her TPS by filing re-registration applications since then. In view of the foregoing evidence, the applicant has established his eligibility for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) as the "spouse ... of an alien currently eligible to be a TPS registrant." Accordingly, the applicant has overcome that ground for denial.

The applicant also submits additional documentation of his residence and physical presence in the United States during the years 2003-2006, including utility bills, bank statements, and a tax notice during the time period from January 2003 to September 2006, and correspondence with CIS in 2005 and 2006. A review of the TPS applications filed by the applicant's wife in December 2001, September 2002, August 2003, and March 2005, show that she listed him each and every time as living with her in Houston, Texas. The foregoing evidence, together with the previously submitted documentation from the years 1999-2001, is sufficient to establish the applicant's continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(c). Accordingly, the applicant has also overcome that ground for denial.

However, the record also indicates that the applicant was outside the United States for a period of time in 2001. CIS records show that the applicant arrived at Houston International Airport on a flight from San Salvador on April 27, 2001, was found inadmissible to the United States under sections 212(a)(6)(C)(i) of the Act (fraud/misrepresentation involving a backdated stamp) and 212(a)(7)(i)(I) of the Act (immigrant without documents), and was removed to El Salvador on the same date in accordance with section 235(b)(1) of the Act. The applicant has provided no evidence about the circumstances and duration of his absence from the United States before and after April 27, 2001. Thus, the applicant has not established his continuous physical presence in the United States since March 9, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b). Accordingly, the director's denial of the application for TPS will be affirmed on this ground.

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.