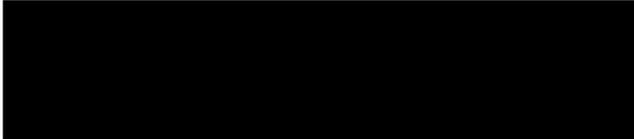


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MAR 05 2007

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 153 77350]

IN RE: Applicant: [REDACTED]

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, 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 director denied the application because the applicant had failed to establish that he: (1) was eligible for late registration; and (2) had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

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 application on March 2, 2005.

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). 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. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated January 16, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director determined that the applicant, in response, had failed to submit evidence to establish that he has met the requirements for late registration and denied the application on April 14, 2006.

On appeal, the applicant asserts that he clearly is eligible for late registration "by virtue of having previously filed an I-589 political asylum application.

The record of proceeding contains a copy of Form I-589, Application for Asylum and for Withholding of Deportation, dated January 15, 1997. In removal proceedings held on November 7, 1997, in Los Angeles, California, the applicant (under the name of [REDACTED] a.k.a. [REDACTED]) withdrew his Form I-589 application, and the Immigration Judge (IJ) granted the applicant voluntary departure on or before August 7, 1998, with an alternate order of deportation to El Salvador. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On October 29, 1998, the BIA noted that the applicant had waived his right to appeal and, therefore, the case was not properly before them. The BIA further determined that the Immigration Judge's decision became administratively final upon the applicant's waiver of his right to appeal, the Board lacks jurisdiction over the case, and there is nothing now pending before the Board. On November 12, 1998, in Los Angeles, California, Form I-205, Warrant of Removal/Deportation, was issued.

The record, in this case, indicates that the applicant withdrew his asylum application on August 7, 1998. Therefore, during the initial registration period for El Salvadorans, the applicant had no pending application for asylum or any relief from removal that is pending or subject to further review or appeal.

The applicant has failed to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

In a notice of intent to deny dated January 16, 2006, the applicant was requested to submit evidence establishing continuous residence and continuous physical presence during the requisite period. The director determined that the applicant, in response, had failed to submit sufficient evidence to establish that he had met the continuous and physical presence and residency requirements and denied the application on April 14, 2006.

On appeal, the applicant asserts that he has been living in the United States since 1996, and that he has sent a massive amount of evidence to prove continuous residence, and that he is resubmitting the documents.

The record of proceeding contains substantial evidence to establish the applicant's residence and physical presence in the United States from 1996 to March 2000, and from July 2003 to the date of filing the TPS application on March 2, 2005. The applicant also submitted copies of Forms 1040, Income Tax Return, for tax years 2001, 2002, 2003, and 2004. He stated in a letter dated February 10, 2006, that he filed late tax deductions because during these periods he was paid cash whenever he found jobs, and that he now understands that even if he gets paid in cash he must file taxes.

The Forms 1040 for the tax years 2001 through 2004 indicate that they were prepared on February 2, 2006. The applicant has failed to submit supporting evidence, such as, letters from his employers and/or pay statements to establish that he was, in fact, in the United States between the periods from February 2001 to July 2003.

The applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will also 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 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.