



U.S. Citizenship
and Immigration
Services

Identifying information delivered to
prevention of unauthorized
invasion of personal privacy

PUBLIC COPY

M1

[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAY 21 2007**
[WAC 03 045 50566]

IN RE: Applicant: [REDACTED]

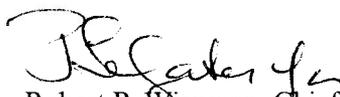
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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, 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 failed to establish he was eligible for late registration.

On appeal, counsel for 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 21, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 3, 2004.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because he had a Form I-589, Application for Asylum and for Withholding of Removal, pending before CIS during the initial registration period. Counsel states that throughout the initial registration period, the applicant continued to receive extensions of his employment authorization based on his pending asylum application. Counsel submits the following:

1. a photocopy of correspondence from the California Service Center dated January 13, 2000, rejecting a Form I-589 seeking to include an alien's spouse as a dependent on his or her asylum application, because a final decision had been made on the spouse's Form I-589, and dependents cannot be added to an asylum application after a final decision has been rendered;
2. an asylum interview notice dated May 2, 2000; and,
3. a photocopy of the applicant's Employment Authorization Card valid from March 3, 2000, to March 2, 2001, based on a pending asylum application.

The record reveals that the applicant filed an initial Form I-589 on June 23, 1993. This application was administratively closed on October 21, 1997, because the applicant failed to appear for his asylum interview or request that his interview be rescheduled.

The applicant subsequently filed a second Form I-589 on September 21, 1998. CIS records indicate that this second asylum application was administratively closed on May 23, 2000, because the applicant failed to appear for his asylum interview.

The record contains a photocopy of a California marriage license indicating that the applicant and [REDACTED], a citizen of Guatemala, were married in Los Angeles, California, on June 19, 1999, after the applicant filed his second Form I-589. The name [REDACTED] is handwritten on the California Service Center correspondence dated January 13, 2000 (No. 1 above). If the applicant's wife attempted to add the applicant to her asylum application as a dependent in January of 2000, it appears that the amended asylum application was rejected and returned to her because a decision had already been made on her asylum application and dependents cannot be added to an asylum application after a decision has been rendered. Therefore, this document does not establish that the applicant had a pending asylum application during the initial registration period.

Both of the applicant's asylum applications were administratively closed prior to the initial registration period for El Salvadorans. Even though it appears that the applicant erroneously continued to receive extensions of his employment authorization based on a pending asylum application during the initial registration period, the fact remains that he did not have an asylum application pending before CIS during the registration period.

Since the applicant, during the initial registration period, did not have an asylum application pending before CIS, he cannot qualify for late initial registration on this basis. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this basis will be affirmed.

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 this burden.

ORDER: The appeal is dismissed.