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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date:

MAY 29 2007

[incorporates [REDACTED]
[WAC 05 342 70237]

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 (AAO) on appeal. 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 record reveals that the applicant filed a late initial TPS application on September 7, 2005, under CIS receipt number WAC 05 342 70237. The director denied the application on August 7, 2006, because the applicant failed to establish that he was eligible for late initial registration for TPS.

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 Citizenship and Immigration Services (CIS) on September 7, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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 or she 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 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 applicant stated that he submitted a late TPS application because he was under the misguided impression that he could not have two pending applications for benefits. With his TPS application, in his response to the director's February 5, 2006 notice of intent to deny, and on appeal, the applicant submitted evidence of his continuous residence and continuous physical presence during the requisite periods.

The applicant claims that he has a pending Application for Adjustment of Status, Form I-485, and therefore, he is eligible for late initial registration. The applicant submitted, as his proof, a photocopy of a CIS appointment letter indicating an appointment, on December 1, 2000; however, the record of proceedings reveals that the applicant's Application for Adjustment of Status was terminated on February 19, 2001, for failure to appear for an interview scheduled on December 1, 2000. It is noted that on November 19, 2001, counsel submitted an Attorney Inquiry to CIS for a status of the applicant's Application for Adjustment of Status. The record reflects that on November 20, 2001, CIS submitted a response to counsel's inquiry which included a copy of the February 19, 2001 termination notice.

In order for the applicant to be eligible for late TPS registration, as an applicant with a former adjustment of status application, he should have submitted his TPS application, no later than 60 days immediately following termination of his adjustment of status application on February 19, 2001, pursuant to the regulations 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). However, the applicant did not file his initial TPS application until September 7, 2005. Therefore, the applicant does not meet the regulatory requirements for late initial registration.

The evidence of record does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period.

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 temporary protected status will be affirmed.

It is noted that the applicant was placed in Deportation Proceedings, and ordered removed from the United States and ordered deported to El Salvador, on January 25, 1996, by the Immigration Judge.

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.