



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



M1

FILE:



OFFICE: Vermont Service Center

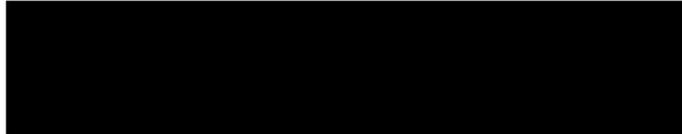
DATE: NOV 16 2007

[consolidated herein]

[EAC 06 311 70712]

IN RE:

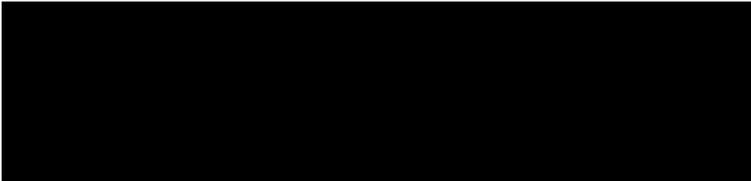
Applicant:



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 TPS applicants from El Salvador.

On appeal counsel asserts that the applicant is eligible for late registration by virtue of an asylum application pending during the initial registration period, and that the documentation of record establishes his continuous residence and physical presence in the United States since the requisite dates in February and March 2001.

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 his initial Form I-821, Application for Temporary Protected Status, on August 7, 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 and filed an application for TPS within 60 days of the termination of such condition(s) in accordance with 8 C.F.R. § 244.2(g).

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 record indicates that the applicant – who claims to have entered the United States without inspection in 1990, was apprehended by the U.S. Border Patrol on April 18, 1991. He was placed in deportation proceedings and, on July 2, 1991, ordered deported to El Salvador by an Immigration Judge in Los Angeles, California. A Warrant of Deportation was issued on September 17, 1991, by the INS (now CIS) District Director in Los Angeles. On January 31, 1995, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589),

which was denied on November 7, 2005, by the Los Angeles Asylum Office. On January 25, 2001, the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), which was dismissed by the Los Angeles Asylum Office on August 23, 2005.

As previously stated, the applicant filed his initial application for TPS on August 7, 2006. In a Notice of Intent to Deny (NOID) on January 10, 2007, the VSC Director requested the applicant to submit evidence that he was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The applicant responded on February 5, 2007, with assorted documentation from the years 1991 to 2007 as evidence of his residence and physical presence in the United States. The applicant asserts that he is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii) because his asylum application was pending during the initial registration period.

On February 26, 2007, the director denied the application on the grounds that (1) the applicant's asylum application was denied on November 7, 2005, and the applicant had not filed for TPS within the next 60 days, as required under 8 C.F.R. § 244.2(g) to qualify for late initial registration, and (2) the documentation of record established the applicant's continuous residence and physical presence in the United States since April 29, 2001, but not as of February 13, 2001, and March 9, 2001, respectively, as required for TPS applicants from El Salvador.

On appeal counsel reiterates the applicant's contention that he is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii) on the basis of the asylum application that was pending during the initial registration period, and resubmits copies of various documentation from the years 2000-2006 as evidence of his residence and physical presence in the United States during that time period.

Based on the entire record, the applicant has established his continuous physical presence in the United States from March 9, 2001, to the date he filed for TPS (in August 2006), and his continuous residence in the United States since February 13, 2001, in accordance with the requirements for El Salvadoran nationals under at 8 C.F.R. § 244.2(b) and (c). Accordingly, the applicant has overcome those grounds for denial of his application for TPS.

The record also confirms that the applicant's asylum application, filed in July 1995, as well as his application for relief from removal under NACARA, filed in January 2001, were pending throughout the initial registration period for El Salvadoran nationals in 2001-02 and ultimately denied by the Los Angeles Asylum Office in 2005. Thus, the applicant meets a qualifying condition for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii). To be eligible for late initial registration, however, the applicant must also have filed his application for TPS within 60 days of the termination of his asylum application, as required under 8 C.F.R. § 244.2(g). Since the asylum application was denied on November 7, 2005, the application for TPS had to be filed by January 6, 2006. The applicant did not satisfy this requirement since his TPS application was not filed until August 7, 2006. Accordingly, the applicant does not qualify for late initial registration under 8 C.F.R. § 244.2(g). The director's denial of the application will therefore be affirmed on this ground.

Beyond the decision of the director, the AAO notes that the applicant did not respond to a request by the Los Angeles Asylum Office on August 23, 2005, for the final court dispositions of three arrests by the Los Angeles

Police Department – the first for “driving under the influence (DUI) of alcohol” in October 2003, the second for “domestic violence” in 2004, and the third for “domestic violence” in February or March 2005. As provided in section 244(c)(2)(B)(i) of the Act, and 8 C.F.R. § 244.4(a), an alien shall not be eligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States. Absent evidence of the disposition of his arrests, the applicant has not established that he meets this legal requirement of eligibility for TPS. For this additional reason the application for TPS cannot be approved.

In any future proceedings before the CIS, the applicant must provide the final court dispositions of his arrests or certified evidence from the appropriate law enforcement agency or court confirming the unavailability of the record.

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.