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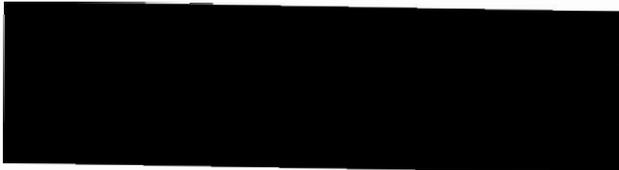
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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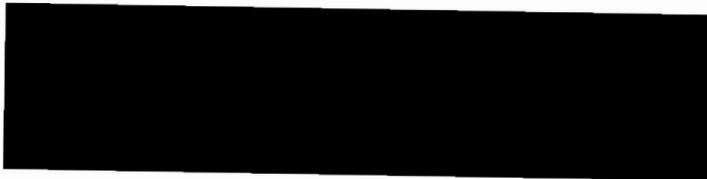


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 27 2007  
[EAC 06 227 76769]

IN RE: Applicant: [REDACTED]

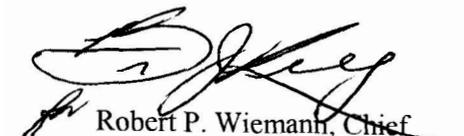
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 that he was eligible for late registration.

On appeal, counsel asserts the applicant's claim of eligibility 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 May 15, 2006.

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 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 record of proceedings shows that the applicant filed a TPS application on September 2, 2003, which was subsequent to the initial registration period, under Citizen and Immigration Services (CIS) receipt number LIN 03 263 51480. The Director, Nebraska Service Center, denied that application on December 11, 2003, because the applicant failed to establish that he qualified for late initial registration, and because he failed to establish qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. On February 19, 2004, the applicant filed an appeal from the denial decision. The director rejected the applicant's response to the December 11, 2003, decision as an appeal because it had been filed untimely, beyond the statutory period of thirty-three (33) days. The director treated the response as a motion to reopen and denied it on March 3, 2004, after determining that the applicant again failed to establish his eligibility for late registration, and his continuous residence and continuous physical presence in the United States.

The applicant filed a second TPS application subsequent to the initial registration period under CIS receipt number WAC 05 208 81263, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant filed an appeal of the director's decision on September 21, 2005. The director rejected the appeal as being untimely filed, and treated it instead as a motion to reopen. On October 25, 2005, the director dismissed the motion to reopen because it did not meet the requirements of 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 15, 2006.

On February 7, 2007, and again on April 20, 2007, 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). In response to the request for evidence, counsel presented a discussion concerning alleged ambiguity of the wording found in 8 C.F.R. § 244.2(f)(2)(i)-(iv). The applicant did not provide any additional documentary evidence to address his eligibility to register for TPS under the late initial filing provisions.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on June 7, 2007.

On appeal, counsel reasserts his arguments concerning the alleged ambiguity of the wording found in 8 C.F.R. § 244.2(f)(2)(i)-(iv). The applicant submitted a copy of his marriage certificate from the State of Minnesota, County of Ramsey, dated February 25, 2006, and a copy of the Employment Authorization Card of [REDACTED] the applicant's wife. Counsel states that the applicant met [REDACTED] in 2000, and that they had their first child in December of 2003.

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). Although the record of proceedings shows that the applicant was married to [REDACTED] on February 25, 2006, he was single at the time of the initial registration period; and therefore, does not qualify for late initial registration. Counsel's statutory arguments concerning the alleged ambiguity of the wording found in 8 C.F.R. § 244.2(f)(2)(i)-(iv) are no substitute for documentary evidence required by CIS to establish his or her eligibility for late registration. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is noted that an outstanding warrant of deportation, dated October 4, 2006, for the removal of the applicant from the United States to El Salvador remains outstanding.

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.