

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

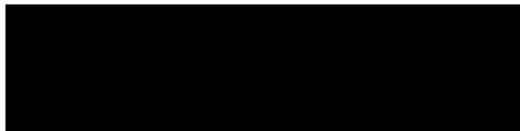
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 30 2007

[WAC 05 225 85476]

IN RE:

Applicant:



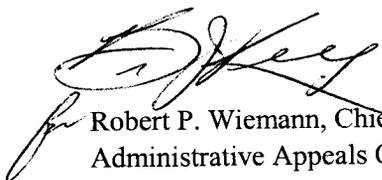
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 his eligibility for TPS late registration and his nationality/identity.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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 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 Service (CIS) on May 13, 2005.

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).

On April 13, 2006, the applicant was requested to submit evidence to establish his nationality. In addition, the applicant was requested to submit evidence to establish his qualifying continuous residence and his continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted additional documentation in an attempt to establish his eligibility.

The director determined that the applicant did not submit sufficient evidence to establish his eligibility for TPS late registration and his nationality/identity. Therefore, the director denied the application on October 11, 2006.

On appeal, the applicant submits copies of his El Salvadoran birth certificate along with an English translation as well as additional documentation regarding his residence in the United States.

The first issue in this proceeding regards the applicant's nationality/identity.

A review of the record reveals that the applicant had previously submitted copies of his California Driver License and his Identification Card issued on October 31, 2000. On appeal, the applicant submits a copy of his El Salvadoran birth certificate. Therefore, the applicant has overcome this ground of denial.

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

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 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 applicant claimed on the Form I-821, Application for Temporary Protected Status, that he married [REDACTED] (A94 293 986) on April 19, 1991. The applicant also submitted a copy of his marriage certificate reflecting that the applicant was married to [REDACTED] on April 19, 1991, at Los Angeles, California. Further, the applicant provided a copy of the Employment Authorization Document (EAD) of [REDACTED] reflecting that she was granted TPS. As such, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision to deny the application on this ground will be withdrawn.

However, although the applicant has overcome the sole grounds for denial, the record also contains a Federal Bureau of Investigation (FBI) transmittal reflecting the following arrest:

- (1) On July 6, 1986, the applicant was arrested by the Los Angeles Police Department and charged with "Theft of Personal Property."

In addition, the record of proceedings reflects the following offenses in California:

- (2) On January 14, 1982, the applicant was charged with failure to appear in violation of section 40508(a) VC, a misdemeanor;
- (3) On January 11, 1982, the applicant was charged with failure to appear in violation of section 40508(a) VC, a misdemeanor and, unlicensed driving violation, a misdemeanor; and,
- (4) On July 7, 1986, the applicant was charged with failure to appear in violation of section 40508(a) VC, a misdemeanor.

In addition, on appeal, the applicant states that he was arrested in August 2002 and August 2004 for "DUI."

The record of proceedings does not contain the final court dispositions for these arrests as detailed in Nos. 1, 2, 3 and 4 above, as well as the final court dispositions regarding the applicant's arrests in August 2002 and August 2004; therefore, the case is remanded so that the director may request the necessary documentation and issue a new decision based on the findings.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for entry of a new decision.