



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 02 2007

[WAC 05 208 74728]

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 California Service Center. 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 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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

The record reveals that the applicant filed a TPS application during the initial registration period on July 5, 2002, under receipt number LIN 02 282 50514. The Director, Nebraska Service Center (NSC), denied that application on April 14, 2003, because the applicant had failed to establish that he had entered the United States prior to February 13, 2001, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present since March 9, 2001. On May 6, 2003, the applicant filed an appeal from the denial decision. That appeal will be addressed in a separate decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on March 24, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the director erred in denying the applicant's TPS application because he does have *prima facie* evidence supporting TPS and he has an I-821 (LIN 03 173 54262 [*appeal* receipt number]) pending under appeal. While counsel indicates he needs 90 days to submit a brief and/or evidence to the AAO, to date, the file contains no further response from counsel. Therefore, the record shall be considered complete.

A review of the record of proceeding indicates that during the pendency of Form I-290B, Notice of Appeal to the Administrative Appeals Office, filed on May 6, 2003 [appealing the initial TPS application, receipt number LIN 02 282 50514], the applicant filed the re-registration application on April 26, 2005, under receipt number WAC 05 208 74728. The CSC director denied the re-registration application on March 24, 2006, and the applicant appealed this decision of the director on April 25, 2006. Counsel is correct in his assertion that the initial TPS application was pending when the director issued a denial notice of the re-registration application. However, a remand of this case to the director based on a premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application, because the record as presently constituted contains insufficient evidence to establish that the applicant has met the criteria for continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant is filing the current TPS application as a re-registration; therefore, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

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.