

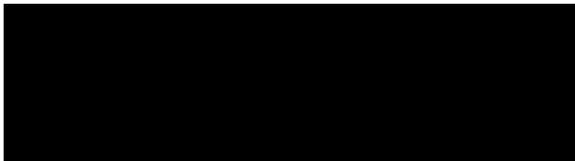


U.S. Citizenship
and Immigration
Services

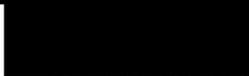
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FILE:



Office: Vermont Service Center

Date: OCT 10 2007

[EAC 06 332 75591]

IN RE:

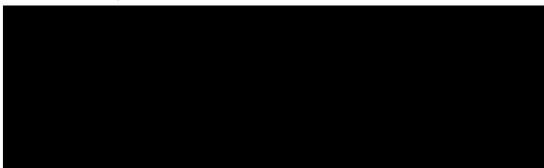
Applicant:



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 Vermont 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 August 28, 2006, under CIS receipt number EAC 06 332 75591. The Director, Vermont Service Center, denied the application on June 4, 2007, because the applicant failed to submit evidence to establish eligibility for late initial registration for TPS, to establish the requisite continuous residence and continuous physical presence in the United States, and failed to submit final court dispositions. The director determined the applicant failed to respond to a January 27, 2007 notice requesting that he submit evidence to establish his eligibility for TPS, including eligibility for late initial registration, and that the applicant failed to submit final court dispositions pertaining to a charge, on September 21, 2005, for Vehicle Theft.

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 as 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 section 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.

- (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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 application with Citizenship and Immigration Services (CIS) on August 28, 2006.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

With his TPS application, the applicant submitted an El Salvador birth certificate (in Spanish), with an English translation, and an El Salvador divorce certificate.

On appeal, the applicant reasserts his eligibility for TPS. With his appeal, in an attempt to establish his continuous residence and his continuous physical presence in the United States, the applicant submits various documents, including tax records, and Social Security earnings records.

The first issue in this proceeding is whether the applicant has established his continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing, August 28, 2006. The record contains sufficient evidence, which cumulatively, establishes the applicant's requisite continuous residence and continuous physical presence.

The next issue in this proceeding is whether the applicant has established eligibility for late initial registration for TPS.

It is noted that the applicant's asylum application was administratively closed on August 25, 2005, after the applicant failed to appear at his scheduled Asylum Interview on August 10, 2005. Under the provisions of 8 C.F.R. § 244.2(g), if the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. In this case, the applicant did not apply for TPS within 60 days of the date of the termination of his asylum application. The applicant, therefore, has not established that he has met the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2) and (g).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be affirmed.

It is noted that the applicant has failed to provide evidence revealing the final court disposition of his arrest on September 21, 2005. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his re-registration application, reflects that the applicant was arrested by the Police Department, Los Angeles, California, on September 21, 2005, and charged with: 1 COUNT OF THEFT OF VEHICLE. On January 27, 2007, the director specifically requested that the applicant submit final court disposition for this arrest. However, the applicant failed to provide the requested court disposition. On appeal, the applicant states that he provided evidence that there was no charge in connection with the arrest. With his appeal, the applicant submits a letter from the Superior Court of California, County of Los Angeles, stating that there is no felony record of an action naming the applicant; and, a Petition to Seal and Destroy Adult Arrest Record, signed February 7, 2007.

It is noted that the Superior Court of California, County of Los Angeles, is not the only Judicial District in the Los Angeles area. The applicant has failed to establish that this court would have had jurisdiction over his offense. In addition, the Petition to Seal and Destroy Adult Arrest Record is not a final court disposition. Furthermore, while the filled-in petition form states "Released no charges" as the basis for the request to seal and destroy the arrest record, there is not indication that petition was granted. The applicant is, therefore, also ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the application must also be denied for this additional reason.

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.