



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: OCT 30 2007

IN RE:

Applicant:



APPLICATION:

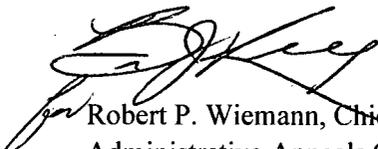
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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 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 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 an initial TPS application on March 26, 2001, under CIS receipt number WAC 01 170 52235. The Director, CSC, initially denied the application on October 15, 2002, due to abandonment because the applicant failed to respond to a request for additional evidence. The applicant filed a re-registration application on March 7, 2005, under CIS receipt number WAC 05 158 78057, which was denied by the CSC director on April 19, 2005, because the applicant's TPS application had been denied and the applicant was not eligible to re-register for TPS. In a subsequent appeal decision, the Chief, AAO, withdrew the director's denial of the initial application, and remanded the application, and the re-registration application to the CSC director for a new decision.

On April 26, 2007, the CSC director again simultaneously denied the initial application and the re-registration application. The director noted that the applicant failed to respond, within 30 days, to a February 13, 2007, notice of intent to deny requesting that he submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite periods. The director also determined that the applicant had failed to submit final court dispositions of an arrest on May 23, 2003. The director also noted that the February 13, 2007 notice was mailed to the applicant's last known address and was returned as undeliverable.

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 the initial application with CIS on March 26, 2001, within the initial registration period for El Salvadorans, and the re-registration application on March 7, 2005.

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 appeal, the applicant reasserts his eligibility for TPS, and states that he has never been arrested or convicted of any crime. The applicant does not submit any additional evidence on appeal.

If the applicant is filing an application as a re-registration, 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.

The record contains sufficient evidence, which cumulatively, establishes the applicant's continuous residence and his continuous physical presence in the United States during the requisite periods. The application may not be approved, however, because as noted by the CSC director, the applicant failed to provide final court dispositions for his arrest (detailed below). The applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his re-registration application, reflects that:

1. On May 23, 2003, the applicant was arrested by the Police Department, Richmond, California, and charged with "BAT, SPOUSE/EX SP/DATE/ETC."

The final court disposition is not in the record of proceeding. As noted by the director, the applicant was specifically requested to submit the final court disposition for this arrest; however, the applicant failed to do so. It is also noted that the applicant does not submit the final court disposition with the appeal. 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). For this reason also, the director's decision to deny TPS is affirmed.

CIS must address the arrest (described above), and any conviction(s) in any future proceedings.

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 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.