



U.S. Citizenship
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Services

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FILE:

[EAC 06 304 81002]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 30 2007

IN RE:

Applicant:

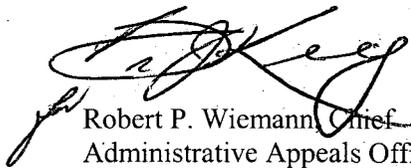
APPLICATION:

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

ON BEHALF OF APPLICANT:

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, Vermont Service (VSC), 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.

The director denied the application because the applicant had failed to establish that he: (1) was eligible for late registration; and (2) had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement.

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.

- (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 condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, 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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application on July 31, 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 Citizenship and Immigration Services (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 indicates that the applicant filed a TPS application during the initial registration period on August 17, 2001, under receipt number WAC 01 283 59369. The Director, California Service Center (CSC), denied that application based on abandonment on April 20, 2004, because the applicant had failed to respond to a request dated January 13, 2004, to submit evidence to establish his nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent TPS application on February 3, 2005, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application on July 5, 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 appealed the director's decision to the AAO on July 21, 2005. The AAO affirmed the CSC director's decision and dismissed the appeal on March 14, 2006.

The applicant filed the current TPS application on July 31, 2006 (receipt number EAC 06 304 81002), and indicated that this is his "first application to register for Temporary Protected Status (TPS)." The VSC director noted that the applicant stated that he was eligible for TPS under the late initial filing provisions because he had a TPS application pending during the initial registration period. The director maintained that a previous application for TPS does not equate to "relief from removal" under 8 C.F.R. § 244.2(f)(2). She also noted that the evidence contained in the record was insufficient to establish continuous residence and continuous physical presence in the United States for the requisite period. The VSC director, therefore, denied the application on April 5, 2007, after determining that the applicant had failed to establish that he was eligible for late registration, and that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel states that the applicant registered for TPS during the initial registration period. Citing *Matter of Barrientos*, 24 I&N Dec. 100 (BIA 2007), counsel asserts that an application for TPS is an application for relief from removal pursuant to 8 C.F.R. § 244.2(f); therefore, the director committed a legal error in finding that the applicant is not eligible for late initial registration. Counsel further asserts that the director failed to consider the evidence already in the record to support the applicant's continuous physical presence, and the director also failed to serve the applicant with a notice of intent to deny, and accord the applicant an opportunity to submit new evidence and rebuttal to the director's findings before denying the application.

Counsel's assertions on appeal are not persuasive. Removal proceedings were initiated against the alien in *Barrientos*, and during his hearing before an Immigration Judge, he sought a *de novo* determination of his eligibility for TPS in the proceedings. In the present case, however, there is no evidence that the applicant had applied for relief from removal or had sought a *de novo* review of his eligibility for TPS before an Immigration Judge. Additionally, there is no evidence in the record that during the initial registration period for El Salvadorans, the applicant was a nonimmigrant or had been granted voluntary departure status or any relief from removal; had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal; was a parolee or had a pending request for reparole; or was a spouse or child of an alien currently eligible to be a TPS registrant. Pending TPS applications do not fall under any of the categories listed in 8 C.F.R. § 244.2(f)(2). Further, TPS does not lead to permanent resident status, nor is it an adjustment of status, but, rather, it is granted to eligible nationals of designated countries suffering the effects of an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions of designated countries, to live and work in the United States. During the period for which the Secretary of Homeland Security has designated a country for TPS, beneficiaries may not be removed from the United States and are authorized to engage in employment. When the Secretary terminates a country's designation, a TPS beneficiary will return to the status he/she had prior to TPS, provided the applicant maintained that status, or to any other status he/she may have obtained while registered for TPS. While TPS may confer benefits that temporarily delay the alien's removal, as maintained by the VSC director, the temporary benefits of TPS do not equate to "relief from removal;" nor do pending TPS applications render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

As provided in 8 C.F.R. § 244.9(a), "applicants shall submit all documentation as required in the instructions or requested by the Service." Additionally, 8 C.F.R. § 103.2(b)(8) provides that, "if there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence." It is noted that the applicant had six opportunities to submit documentation to support his claim of continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application: (1) when he filed his initial application on August 17, 2001; (2) when a notice of intent to deny was issued on January 13, 2004; (3) when

he filed his re-registration application of February 3, 2005; (4) when he appealed to the AAO the director's denial of the re-registration application on July 21, 2005; (5) in the present case, when he filed a "first" application on July 31, 2006; and (6) when he appealed to the AAO the director's denial of the "first" application on April 20, 2007.

The VSC director, in her denial decision, listed and addressed the evidence furnished by the applicant that is contained in the record of proceeding. It is noted that that evidence was originally submitted by the applicant with his initial application filed on August 17, 2001. Although he had filed subsequent TPS applications, the applicant failed to accompany those applications with the required documentation to establish residence and physical presence to the date the applications were filed.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, the applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application on these grounds will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.