

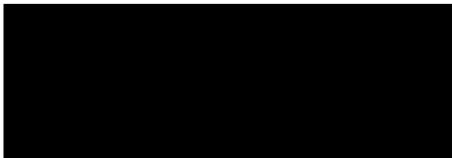
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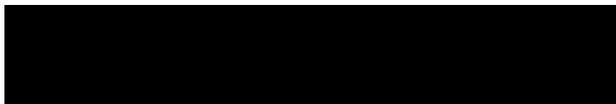
OFFICE: Vermont Service Center

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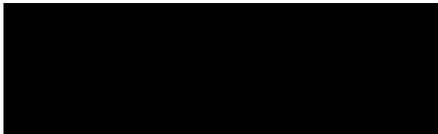
Applicant:



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 Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador.

On appeal the applicant asserts that he did not received the director's notice of intent to deny and was therefore unable to submit any requested evidence.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 phrase 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.

The phrase 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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on September 4, 2006 – four years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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). See 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. See 8 C.F.R. § 244.9(b).

In a Notice of Intent to Deny (NOID) dated February 20, 2007, the director requested the applicant to submit evidence that he was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The applicant failed to respond in the requested 33 days, after which the director denied the application on April 4, 2007, for the reasons cited in the NOID.

The applicant filed a timely appeal in which he asserted that he did not receive the NOID in the mail and requested that he be sent another copy so that he could address the evidentiary issues discussed therein. In the alternative the applicant requested that he be granted TPS "sua sponte" based on the hardships of El Salvador. With regard to the applicant's claim that he did not receive the NOID, the AAO notes that the copy of that document in the record includes the applicant's correct address. Even if he did not receive it, the applicant was advised in the decision, which he did receive, of the grounds for denial. Therefore, he had ample opportunity to submit documentary evidence addressing the issues of his late filing and the requirements of continuous residence and continuous physical presence in the United States since February and March 2001, respectively. No such evidence has been submitted, however, in support of the appeal.

Thus, there is still no evidence in the record that the applicant is eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Nor has the applicant established that he was continuously physically present in the United States from March 9, 2001, to the date his TPS application was filed in September 2006, and that he has resided continuously in the United States since February 13, 2001, as required for El Salvador nationals under section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Furthermore, the applicant acknowledged on his Form I-821 that he entered the United States without inspection on December 29, 2004, and CIS records confirm that he was arrested that day in Penitas, Texas, after crossing the border illegally from Mexico. Thus, the record clearly indicates that the applicant has not been continuously resident and physically present in the United States for the requisite time periods to qualify for TPS. The AAO has no statutory or regulatory authority to waive any of the foregoing requirements for TPS, whatever the hardships in El Salvador. Accordingly, the director's decision will be affirmed on all grounds.

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 TPS 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 that burden.

It is further noted that the applicant is subject to a removal order issued by an Immigration Judge in Los Angeles, California, on January 9, 2006.

ORDER: The appeal is dismissed.