

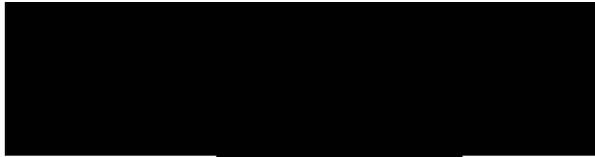


U. S. Citizenship
and Immigration
Services

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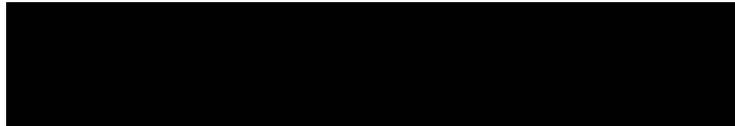
[EAC 03 244 52021]

Office: VERMONT SERVICE CENTER

Date: **APR 042008**

INRE:

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 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, and is now before the Administrative Appeals Office 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.

It is noted that although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted by _____ Director, Imm-Legal Services, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also noted that the applicant failed to provide the final court disposition regarding his past arrest.

On appeal, counsel cites 8 C.F.R. §244.2 and indicates that the plain language of this section makes clear that the applicant is eligible for TPS, and should not be considered as a late registrant where he properly filed an application for TPS during the initial registration period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number EAC 02 149 51690. The director denied that application on May 7, 2003, due to abandonment, because the applicant failed to the director's request for evidence. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form 1-821, Application for Temporary Protected Status, on August 20, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration.

The applicant's initial Form 1-821 was properly filed on March 27, 2002. That initial application was denied by the director on May 7, 2003. Any Form 1-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

The applicant filed the current Form 1-821 on August 20, 2003. Since the initial application was denied on May 7, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 designated by the Attorney General 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
- (t)
 - (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 (t)(2) of this section.

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 20, 2003.

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 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 October 8, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested the applicant to submit evidence to show that he is a citizen or national of El Salvador. The applicant was also requested to submit evidence establishing his residence since February 13, 2001, and his physical presence in the United States since March 9, 2001, to the date of filing. The applicant, in response, provided evidence in an attempt to establish his qualifying residence and physical presence in the United States, as well as his El Salvador birth certificate with an English translation and his passport.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on March 22, 2004.

On appeal, counsel states that the applicant filed his initial TPS application during the requisite registration period, and therefore, should not be subject to the late registration requirements.

Contrary to counsel's assertions, the applicant's initial TPS application was denied by the director due to abandonment. The applicant was informed that he had 30 days from the denial date to file a motion to reopen in that case. The record does not contain a response from the applicant with respect to the initial denial due to abandonment. The applicant filed the current TPS application, which is considered a late application because it was filed on August 20, 2003, after the initial registration period had closed.

The applicant submits, on appeal, evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence 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 application for TPS on this ground will be affirmed.

A second issue is concerns the applicant's past arrest on May 28, 1998.

The director also stated in her denial decision that the records indicated that the applicant was arrested on May 28, 1998 by the Reading Police Department and charged with Criminal Trespass.

On appeal, the applicant states that he never intended to abandon his application, that he submitted all the evidence that was requested of him, and that his conviction for simple trespass is not considered a felony or a misdemeanor, but is characterized as a "summary offense."

The applicant, on appeal, submits copies the final court disposition stemming from his arrest on May 28, 1998, by the Reading, Pennsylvania Police Department. The court record shows that the applicant pled guilty to simple trespass on April 25, 2003, before the Reading Central Court in Reading, Pennsylvania. This offense is categorized as a summary offense and carries a maximum of 90 days in jail. The single misdemeanor conviction would not bar the applicant from being considered for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Beyond the decision of the director, the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States from March 9, 2001, to August 20, 2003, the date of filing. The applicant submitted as evidence a number of pay stubs, a copy of his social security card, and personal income tax records. Amongst these documents, the applicant has listed three different social security numbers and [REDACTED]. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

Therefore, the applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision dated March 22, 2004, determining that the applicant had established his continuous residence and continuous physical presence in the United States, will be withdrawn.

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 this burden. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.