



U.S. Citizenship
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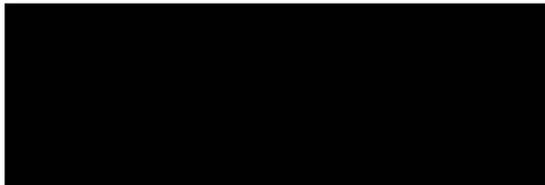
FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 0717152325 Appeal]
[EAC 07 00574619 Application]

Date: FEB 01 2008

INRE: Applicant: [REDACTED]

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, Vennont 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 applying for 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 failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had continuously resided in the United States since **February** 13, 2001 or that he had been continuously physically present in this country since **March** 9, 2001.

On appeal, counsel states the applicant into the United States in 1991 and has continuously resided in this country since that date. Counsel argues that Citizenship and Immigration Services (CIS), should reopen the applicant's window of opportunity to file his application for TPS on the basis of ineffective assistance of counsel. Counsel states that the applicant did not appear for a hearing because of fraudulent misrepresentation of non-lawyer and the 180 period for filing reopening was tolled.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has **been** filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, **and** if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit an affidavit in support of his **claim**, evidence confirming that counsel has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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 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.

Persons applying for TPS offered to El Salvadorans 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 application with Citizenship and Immigration Services on October 5, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R § 244.2(f)(2) above.

On February 7, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. He did not respond to the director's request.

The record reflects that the applicant was included on his mother's Form 1-589, Request for Asylum and for Withholding of Deportation. His Form 1-589 was denied on March 1, 2005, because he failed to appear for his interview. While the applicant's pending 1-589 rendered him eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of such conditions. 8 C.F.R § 244.2(g). In this case, since the applicant's 1-589 was closed on

March 1, 2005, his 60-day period for late registration expired on May 2, 2005. The applicant filed his application for TPS with the director on October 5, 2006.

On appeal, the applicant submits evidence to establish his continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his 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 the regulations at 8 C.F.R. § 244.2(t)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The applicant submits evidence including bank statements, federal income tax returns, pay stubs, school records and other documentation establishing that he had continuously resided in the United States from February 13, 2001 and been continuously physically present since March 9, 2001. It is determined that the applicant has provided evidence establishing his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the applicant has overcome the director's determination concerning these two grounds for denial. Nevertheless, the applicant remains ineligible for TPS due to his late filing, as detailed above.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited 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.