

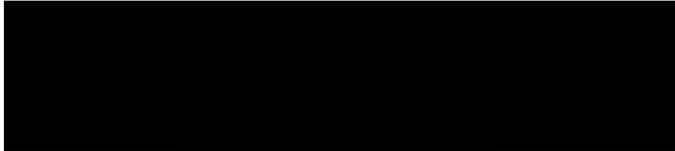
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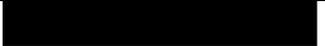
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 04 2008

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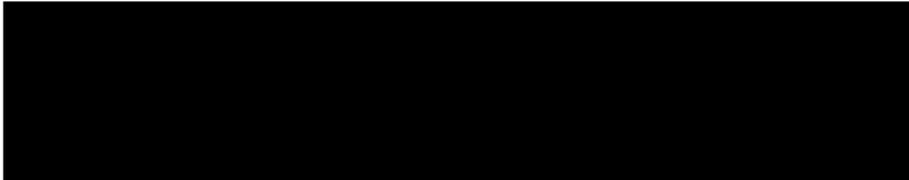
IN RE:

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 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, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The decision of the director will be withdrawn, and the application will be approved.

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 because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel for the applicant submits a brief statement.

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 Temporary Protected Status only if such alien establishes that he :

- (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 § 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.

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 applicant filed his Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) [formerly the Immigration and Naturalization Service (INS)] on September 24, 2006 – more than four years after the initial registration period had ended.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On December 7, 2006, 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 applicant was also requested to submit evidence establishing his nationality and identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel provided documentation establishing the applicant's nationality and identity, as well as his continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Counsel also submitted additional documentation indicating that the applicant's removal proceedings had been dismissed by an Immigration Judge (IJ) on July 14, 2004.

The director determined that the applicant had failed to submit any evidence to establish his eligibility for late registration and denied the application on January 10, 2007. In her decision, the VSC director determined that although the applicant was under removal proceedings during the initial registration period, he had failed to file his application for late registration within 60 days of the IJ's issuance of a decision on July 14, 2004.

The applicant, through counsel, filed his current appeal from that decision on February 9, 2007. On appeal, counsel asserts that the applicant is eligible for late registration because the IJ administratively closed, but did not

terminate his case; therefore, the applicant's case is still technically pending. On appeal counsel cites *Matter of Gutierrez-Lopez*, 21 I&A Dec. 479, to support that claim.

In brief, CIS records reveal that the applicant was apprehended entering the United States without inspection on July 12, 1991, near Douglas, Arizona. On March 6, 1992, an Immigration Judge (IJ) ordered the applicant deported from the United States to El Salvador. On June 14, 1995, the applicant married a United States citizen, who filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on March 15, 1996. The applicant simultaneously submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. The I-130 petition was approved on October 31, 1996, and on September 25, 1997, deportation proceedings against the applicant were terminated. On November 30, 2000, approval of the Form I-130 was revoked, the Form I-485 was denied, and the applicant's case was returned to the IJ to reopen deportation proceedings against the applicant. On July 14, 2004, those proceedings were administratively closed. The IJ's order does not indicate a final decision on the applicant's deportation proceedings; thus, the applicant's proceedings are still considered pending before, and subject to further review by, the IJ.

Based on the foregoing record, the AAO agrees that the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). Furthermore, the record does not reveal any grounds of ineligibility for TPS. Accordingly, the appeal will be sustained and the director's decision to deny the application on the ground of failure to establish eligibility for late TPS registration will be withdrawn. The application will be approved.

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. Here, the applicant has met that burden.

ORDER: The appeal is sustained. The decision of the VSC director, dated January 10, 2007, is withdrawn. The application is approved.