



U.S. Citizenship
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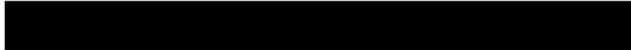
Office: VERMONT SERVICE CENTER

Date: FEB 05 2008

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IN RE:

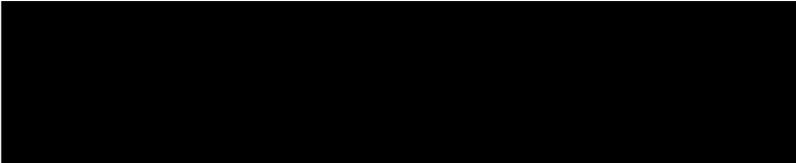
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act (the 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who seeks 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 did not file his initial application within 60 days of his asylum application being denied. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States. Finally, the director found that the applicant had failed to submit a photo identity document to establish his identity.

On appeal, counsel for the applicant asserts that the applicant had a Form I-589, Application for Asylum and for Withholding of Deportation, pending during the initial registration period and that the asylum application is still pending before the Immigration Judge (IJ), because the IJ has not yet adjudicated the application on the merits. Counsel submits a brief and additional documentation.

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
- (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.

Persons applying for TPS offered to 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. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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

The burden of proof is on 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 reflects that the applicant filed his initial TPS application on October 20, 2006 – almost four years after the close of the initial registration period for Salvadorans. In support of his application, the applicant submitted photocopies of the following: his birth certificate, with translation; his Employment Authorization Documents (EADs), issued as a result of a pending asylum application, issued in 2001, 2002, 2003, 2004, and, 2006; pay stubs from an unidentified employer, indicating employment from December 13, 1999, to July 8, 2001; earning statements from NSC, indicating employment from July 24, 2003, through January 6, 2005; and, an earning statement from Farmland Foods, dated September 1, 2005. The director accepted the application under the late filing provisions of 8 C.F.R. § 244.

On May 23, 2007, the director denied the application, finding that the applicant had a pending asylum application during the initial registration period, but did not file his initial TPS application within 60 days of the denial of his

asylum application. The director also found that the applicant did not submit evidence of his residence and physical presence from the years 2002 and 2006 and so failed to establish his qualifying continuous residence and continuous physical presence. Finally, the director found that the applicant had failed to submit an identity document bearing his photograph.

On appeal, counsel for the applicant asserts that the Asylum Office referred the applicant's asylum application to the Immigration Judge (IJ). Counsel further asserts that the IJ terminated removal proceedings against the applicant because of Immigration and Customs Enforcement's (ICE) failure to prosecute the case. Counsel asserts that the IJ has not yet adjudicated the asylum application on the merits, and that the applicant still has an asylum application pending before the IJ. Counsel submits additional documentation, including a copy of the applicant's Nebraska driver's license.

The record reflects that the applicant's mother, [REDACTED] alien registration number [REDACTED], filed an asylum application, in which she identified the applicant as a dependent child, on May 30, 1995.¹ The application was accepted under the provisions of the American Baptist Churches (ABC) settlement agreement. The applicant's mother also filed a Form I-881, Special Application for Suspension of Deportation or Cancellation of Removal (NACARA) with the Asylum Office. The Los Angeles Asylum Office interviewed the applicant's mother in reference to both her ABC asylum and NACARA applications. On August 9, 2004, the Asylum Office issued a Notice of Intent to Deny the ABC asylum application, and on November 10, 2004, denied the ABC asylum application. The Asylum Office denied the ABC asylum application and referred the Form I-881 of the applicant's mother to the IJ. On December 1, 2004, the Asylum Office served a Notice To Appear before the IJ on the applicant. On December 29, 2004, the IJ terminated removal proceedings against the applicant for ICE's failure to prosecute.

On August 17, 2006, the director, Nebraska Service Center (NSC) sent the applicant a notice, denying his asylum pending EAD application. The director stated that the applicant's request for asylum had been denied on October 29, 2004. The director noted that the IJ terminated proceedings on December 29, 2004, and that there was no evidence of an appeal on this decision.

The ABC asylum application was denied, not referred to the IJ, on November 10, 2004. Counsel for the applicant erroneously asserts that the asylum application was referred to the IJ. In fact, only the Form I-881 NACARA application was referred to the IJ. The Asylum Office completed the adjudication of the ABC asylum application when it denied it on November 10, 2004.

However, the applicant does not appear to have had notice of the completion of his asylum application. CIS records reflect that CIS continued to treat the applicant as an alien with a pending asylum application and that the applicant continued to receive EAD's as a pending asylum applicant even after the Asylum Office denied his asylum application and the IJ terminated proceedings against him. The applicant was issued an asylum pending EAD as late as August 3, 2006. It was not until August 17, 2006, that CIS notified the applicant that his asylum application was considered to have been decided and was no longer considered pending.

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The applicant turned 21 on December 25, 2003. CIS continued to treat the applicant as a dependent applicant for asylum after he turned 21. This treatment is consistent with § 208(b)(3)(B) of the Act, 8 U.S.C. § 1158(b)(3)(B), as amended by the Child Status Protection Act of 2002.

The asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). On October 20, 2006, the applicant filed the current TPS application. Thus, the applicant filed his application within 60 days of when CIS informed him that his asylum application was no longer considered pending, as required under 8 C.F.R. § 244.2(g). Accordingly, the director's decision to deny the application on this ground will be withdrawn.

The evidence submitted by the applicant establishes his qualifying residence and continuous physical presence. The applicant's EADs establish continuous residence and continuous physical presence from 2001 to 2006. In addition, the pay stubs and earning statements establish continuous residence and continuous physical presence from 1999 to 2005. The applicant has submitted sufficient credible evidence to establish the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for TPS on these grounds will also be withdrawn.

On appeal, the applicant submits his Nebraska driver's license. This, along with his previously submitted birth certificate is sufficient to establish the applicant's identity and Salvadoran nationality. The director's decision to deny the application for TPS on this ground will also 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 met this burden.

ORDER: The appeal is sustained.