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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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M

[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 14 2008
[EAC 06 336 74909]
[REDACTED] consolidated]

IN RE: 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:

[REDACTED]

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 sustained.

The applicant claims to be 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 he determined that the applicant failed to establish he was eligible for late registration.

On appeal, counsel asserts that subsequent to the May 14, 2004, notice issued by the Chicago Asylum Office, the applicant was not given any further communication in regards to his Nicaraguan Adjustment & Central American Relief Act (NACARA) application. Counsel states that based on the notice of May 14, 2004, the applicant's asylum/NACARA application could still be subject to further review by the immigration court, Board of Immigration Appeals or Federal Courts.

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.

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.

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 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).

On March 21, 2007, 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 continuous physical presence in the United States from February 13, 2001, to the date of filing. The applicant, in response, provided evidence to establish late registration and his qualifying residence and physical presence in the United States.

The director determined that in response to the notice of March 21, 2007, the applicant had provided sufficient evidence to establish his continuous residence and physical presence in the United States during the requisite periods; however, the evidence submitted to establish eligibility for TPS late registration was insufficient. The director noted, “[a]s of April 15, 2004, your asylum application and NACARA applications were officially closed and considered no longer pending. However, since you were previously ordered deported on September 25, 1996, your file, not your NACARA application, was forwarded to USICE for “review and further processing.” The director concluded since there was no record of the applicant filing a TPS application within a 60-day period immediately following the withdrawal of his asylum application and the dismissal of his NACARA application, he did not qualify for late registration. Therefore, the director denied the TPS application on May 7, 2007.

The record reveals that on April 8, 1996, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, and was assigned alien registration number [REDACTED]. On July 2, 1996, the applicant, through former counsel, withdrew the Form I-589. On July 23, 1996, a Form I-221, Order to Show Cause and Notice of Hearing, was issued. On September 25, 1996, the applicant was ordered deported *in absentia* by an immigration judge. On August 21, 1998, the applicant was married to his spouse, [REDACTED]. On September 23, 1998, the applicant’s spouse requested that the applicant be added

to her Form I-589 [REDACTED]¹ On June 9, 1999, a Form I-205, Warrant of Removal/Deportation, was issued.

On September 21, 2000, the applicant filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal, under alien registration number [REDACTED]. Citizenship and Immigration Services (CIS) records reflect that on December 1, 2000, the applicant filed a Form I-589, and on April 15, 2004, the Form I-589 was withdrawn and the Form I-881 was dismissed. In a notice dated May 14, 2004, the Director, Chicago, Illinois, informed the applicant that he was ineligible to file a NACARA application because the applicant was subject to an outstanding final order of deportation or removal and no evidence of a motion to reopen had been filed. In a separate notice dated May 14, 2004, the Director, Chicago Office for Asylum, advised the applicant that he was not eligible for benefits under the *American Baptist Church v. Thornburg* (ABC) Settlement Agreement because he did not file an asylum application in a timely manner. The director noted that CIS did not have jurisdiction over the applicant's asylum claim and his file was being forwarded to the Immigration and Customs Enforcement (ICE) local office for review and further processing. On August 17, 2004, the applicant filed a Form I-821, Application for Temporary Protected Status, under receipt number LIN0423450616. On May 16, 2006, a Form I-205 was issued. CIS records reflect that on July 19, 2006, the applicant was placed in removal proceedings. On August 1, 2006, a stay of removal was granted until August 24 2006, by an immigration judge. On August 16, 2006, the applicant filed the current TPS application. CIS records reflect that on August 18, 2006, the immigration judge issued an administrative final removal order. On August 25, 2006, the applicant was released from ICE custody under a \$5000.00 bond.

As a final determination had not been rendered by an immigration judge until August 18, 2006, the applicant has establish that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). The sole ground for denial of the application has been overcome. Therefore, the director's decision will be withdrawn and 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 this burden.

ORDER: The appeal is sustained and the application is approved.

¹ The applicant was ineligible to be added to his spouse's Form I-589 due to his previous removal order of September 25, 1996.