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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 15 2008

[EAC 06 336 77056]

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 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). It is now on appeal before the Administrative Appeals Office (AAO). 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 The decision of the director will be withdrawn, and the application will be approved.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 on the ground that the applicant failed to establish he was eligible for late registration since his TPS application was filed more than 60 days after the denial of his asylum application.

On appeal, counsel submits a brief and an additional document.

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 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.

El Salvadoran nationals applying for TPS 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 reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 16, 2006 – almost four years after the close of the initial registration period for TPS applicants from El Salvador. On February 6, 2007, the VSC issued a Notice of Intent to Deny (NOID) requesting the applicant to submit evidence that he qualified for late registration in accordance with the provisions of 8 C.F.R. § 244.2(f)(2) and (g). The applicant was also requested to submit evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On March 7, 2007, the director denied the application. After noting the applicant's claim in response to the NOID that his Employment Authorization Card (issued to him as an asylum applicant) was valid until July 3, 2006, the director stated that a valid Employment Authorization Card does not meet the definition of a "qualifying condition." Since the applicant did not file his initial TPS application until August 16, 2006, which was more than 60 days after the end of the applicant's qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2)(ii), the director concluded that the application was not filed within the 60-day period prescribed in 8 C.F.R. § 244.2(f)(g) to qualify for late registration.

The applicant, through counsel, filed a timely appeal on April 4, 2007. On appeal, counsel asserts that the applicant is eligible for late registration because he filed his TPS application within 60 days of being informed that his asylum application had been denied.

The burden of proof is upon the applicant to establish that he or she meets the requirements discussed above. Applicants shall submit all documentation as required in the instructions or requested by CIS. *See* 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. *See* 8 C.F.R. § 244.9(b).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the qualifying conditions described in 8 C.F.R. § 244.2(f)(2) above, and that he filed his TPS application within 60 days of the end of that qualifying condition, as prescribed in 8 C.F.R. § 244.2(g). The applicant asserts that he qualified for late TPS registration based on the asylum application (Form I-589) he filed in 1995. The AAO agrees that the asylum application was a qualifying condition for late filing under 8 C.F.R. § 244.2(f)(2)(ii).

The record shows that the applicant, who claims to have entered the United States without inspection on January 12, 1991, filed a Form I-589, Application for Asylum and Withholding of Deportation, on December 21, 1995. CIS computer records indicate that on June 24, 2005, the applicant failed to appear for an interview required in connection with that application, and that the application was denied on August 8, 2005. It is noted that the record of proceedings does not contain copies of either the interview notice or denial decision. Nor do the computer records specifically indicate that the interview notice and denial decisions were ever actually mailed to the applicant at a correct address.

On appeal, counsel states that the applicant never received the interview notice and did not learn that his asylum application had been denied until he received a decision from the VSC, dated August 4, 2006, denying an Application for Employment Authorization (Form I-765) on the ground that his asylum application had been denied on August 8, 2005, for failure to appear for a scheduled interview. Until furnished by counsel on appeal, the record of proceedings also did not contain a copy of the decision to deny the Form I-765.

The AAO agrees with the applicant's claim that the filing of his current TPS application outside the 60-day window allowed for late initial registration under 8 C.F.R. § 244.2(g) appears to have resulted from his never having been issued a notice of the denial of his asylum. Once he learned that his asylum application had been denied, in the Form I-765 decision, the applicant moved expeditiously to file a TPS application. The Form I-821 and supporting materials were mailed to CIS on August 14, 2006, just ten days after the decision on the Form I-765 application was issued, and when received on August 16, 2006, the application was duly filed. Since the TPS application was filed well within 60 days of the date he first received information about the denial of his asylum application, the applicant has complied with the time limit prescribed in 8 C.F.R. § 244.2(g) for filing late initial TPS registration.

The record includes substantial documentary evidence to establish the applicant's identity and El Salvadoran nationality, as well as his continuous physical presence in the United States since March 9, 2001, and his continuous residence in the United States since February 13, 2001, as required under 8 C.F.R. § 244.2(a), (b), and (c) for TPS applicants from El Salvador. The record does not reveal that the applicant is inadmissible to the United States on any other grounds. The applicant has established his eligibility for TPS in accordance with section 244(c) of the Act and 8 C.F.R. § 244.2. Accordingly, the appeal will be sustained. The director's decision denying the application will be withdrawn, and the application will be approved.

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. Here, the applicant has met that burden.

**ORDER:** The appeal is sustained. The director's decision, dated March 7, 2007, is withdrawn, and the application is approved.