

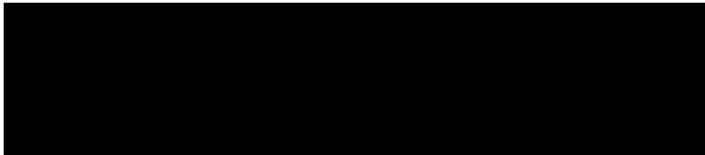
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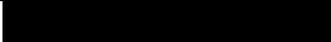
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 15 2008

[WAC 05 214 71356]

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (CSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 20 year-old, 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 failed to respond to request for evidence and to establish his eligibility for late initial registration

On appeal, the applicant asserts that he did respond to the request for evidence and asserts that he is eligible for late initial registration as the child of a TPS registrant.

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 as 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.

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. Subsequent extensions of the TPS designation have been granted, 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 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 May 2, 2005 - more than two years after the close of the initial registration period for Salvadorans. The applicant indicated on his application that he entered the United States, without inspection, on October 5, 2003. In support of his application, the applicant submitted his birth certificate, indicating that he was born on May 29, 1987, to [REDACTED] his high school identification card; and, a letter from his mother, which stated that the applicant did not apply for TPS during the initial registration period because he was not yet in the United States. The applicant did not submit proof of his mother's immigration status.

On February 27, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) his application and requested that the applicant submit evidence establishing his qualification for late-initial registration. The

director also requested that the applicant submit evidence to establish his continuous residence and continuous physical presence. In addition, the director requested that the applicant submit proof of his identity and nationality. Finally the director requested that the applicant submit evidence of his date of entry into the United States. In response, the applicant submitted photocopies of the following documents: his birth certificate, with translation; another letter from his mother, stating that he could not submit evidence of his residence and physical presence in 2001 because he did not enter the country until October 5, 2003; and, his mother's Employment Authorization Document (EAD), which indicated that she was a TPS registrant with alien registration number A95 016 371.

On April 26, 2006, the director denied the application, finding that the applicant had not responded to the NOID and that he had still not satisfied the eligibility requirements for late-initial registration.

Although the director stated that the applicant did not respond to the NOID, the record of proceeding indicates that the applicant did respond. The documentation the applicant submitted establishes that, during the initial registration period, he was the child of an alien currently eligible to be a TPS registrant and is, therefore, eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). Therefore, the director's decision to deny the application on this ground will be withdrawn.

The application cannot be approved, however, because a late-filing child of a TPS-eligible parent must meet the same continuous residence and continuous physical presence requirements as all other TPS applicants. The applicant did not submit any evidence regarding his qualifying continuous residence and continuous physical presence. Moreover, since the applicant did not enter the United States until October 5, 2003, he cannot satisfy the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c).

An alien applying for TPS 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.