



U.S. Citizenship
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FILE: [REDACTED]
[EAC 0324753197]
[EAC 02 261 51737]

Office: Vermont Service Center

Date: FEB 26 2008

INRE: 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.

for 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 initial application will be reopened, *sua sponte*, by the Chief, AAO, and that application will be approved. A subsequent application was denied by the VSC director and is currently before the AAO on appeal. The appeal will be sustained and this application will be approved.

The applicant is a native and 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, the applicant asserts his claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on September 2, 2003.

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 September 30, 2003, the director sent a Notice of Intent to Deny and requested the applicant to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director

determined that the record did not contain a response from the applicant; and therefore, denied the application on December 1, 2003.

On appeal, the applicant states that he first entered the United States on June 15, 2000. He also states that he returned to El Salvador at the end of December 2000, and re-entered the United States on February 1, 2001, as a visitor. The applicant also provides copies of his El Salvadoran passport containing a B-2 visitor visa and Form I-94, Departure Card (No. [REDACTED]).

A review of the record reveals that the applicant filed his initial TPS application [EAC 02 261 51737] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 10, 2002. That application was administratively closed on April 21, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 2, 2003. The director denied this application on December 1, 2003, because the applicant failed to respond to a request for evidence regarding his eligibility for TPS late registration.

A review of the record of proceedings reflects that on November 1, 2003, the applicant responded to the director's September 30, 2003, request and [REDACTED] Sales Manager of [REDACTED] statements: a letter dated October 22, 2003, from Mr. [REDACTED] stating that the applicant had been employed from July 2000; a receipt from the Massachusetts Mover's Association dated May 5, 2001; copies of seven Western Union money transfer receipts dated February 5, 2001, to September 9, 2002; and a letter dated October 29, 2003, in response to the director's September 30, 2003, request.

In addition, a review of the applicant's passport and the Form I-94, Departure Card, reflects that the applicant was admitted to the United States as a B-2, non-immigrant visitor, at Los Angeles, California on February 1, 2001, with authorization to remain in the United States until July 31, 2001. Furthermore, a review of the documentation provided by the applicant on appeal establishes the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. Therefore, the initial application will be reopened, and 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. The applicant has met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.