



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **JAN 022008**

[WAC 05 141 70129]

INRE:

Applicant:



APPLICATION:

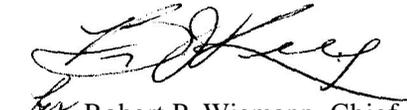
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:



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, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the 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 record reveals that the applicant filed a TPS application during the initial registration period on March 27, 2001, under receipt number SRC 01 15664030. The Director, Texas Service Center (TSC), denied that application based on abandonment on October 11, 2002, because the applicant had failed to respond to a request to submit evidence to establish nationality and identity. On November 5, 2003, the applicant, through his mother, filed an appeal from the denial decision. The TSC director rejected the appeal on January 15, 2004, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 18, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The CSC director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the CSC director denied the application on April 27, 2006.

On appeal, counsel asserts that the application was denied in error because the application was for a late initial registration and not a re-registration application. Counsel further asserts that the applicant is eligible for late registration for TPS because he is the minor son of a currently-approved TPS applicant.

The applicant, in this case, was not filing a re-registration application but, rather, he was filing his first or initial application. Therefore, this application will be treated as the applicant's "first application" to register for TPS, the decision of the director will be withdrawn, and a decision will be made based on late initial application.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on February 18, 2005.

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 CF.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).

In a Notice of Intent to Deny dated February 5, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 CF.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, the applicant submitted a copy of his birth certificate with English translation; a copy of a State of North Carolina Identification Card issued to the applicant on September 15, 2003; his North Carolina school records for school years 1998 through 2004, inclusive; copies of his mother's Employment Authorization Cards; and a copy of Form I-797C, Notice of Action, dated September 12, 2002, advising ___ **that** she had been granted TPS.

The CSC director did not address the evidence furnished by the applicant but, rather, issued a notice of decision denying the applicant's TPS application after concluding that the applicant was not eligible to apply for re-registration for TPS.

A review of the record indicates that ___ was indeed approved TPS status on September 12, 2002. Accordingly, the applicant has established that he has met the criteria for late registration described in 8 CF.R. § 244.2(f)(2)(iv) as the child of an alien granted TPS.

The applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 CF.R. § 244.2(b) and (c). 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. The applicant has met this burden.

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