



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

MA

[REDACTED]

FILE:

[REDACTED]
[EAC 06 279 75583]

Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 01 163 50854 during the initial registration period closed. The director denied that application on May 16, 2002, after determining that the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny. On August 29, 2002, the applicant filed a motion to reopen that was denied by director on April 23, 2003. The director denied the current application because the applicant failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had continuously resided in the United States since February 13, 2001 or that he had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant's attorney states that the applicant has been the victim of ineffective assistance of counsel because of the representations made to him by a so called "attorney" doing business in New York. Counsel argues that because his the applicant's former representative had no legal right to act as his attorney, his client should not be penalized with such a drastic decision considering that the circumstances surrounding his TPS application are beyond his control. Counsel submits documentation to establish the applicant's continuous residence and continuous physical presence during the required period.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit an affidavit in support of his claim, evidence confirming that counsel has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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 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.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on July 6, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On appeal, the applicant submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the application shall be denied for this reason.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated May 30, 2007, indicating that the United States Border Patrol apprehended the applicant after he illegally entered the United States by swimming across the Rio Grande River on May 27, 2007. At his interview on May 30, 2007, before a Senior Patrol Agent in McAllen, Texas, the applicant was asked "Where do you reside now?" He answered that "I live in San Juan Opico, La Libertad, El Salvador." Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c) which require his continuous residence in the United States since December 30, 1998 and his continuous physical presence in this country since January 5, 1999. Consequently, the application shall be denied for these additional reasons.

On May 30, 2007, the applicant was found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act and removed from this country on June 19, 2007.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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.