



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

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FILE:



Office: Vermont Service Center

Date:

JAN 03 2008

[EAC 04 01551363]

INRE:

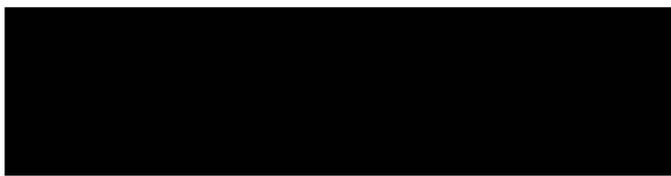
Applicant:



APPLICAnON:

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.

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 The director's decision will be withdrawn and the appeal will be sustained.

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 he was eligible for late registration.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application [EAC 01 211 55003] for TPS during the initial registration period. That application was denied on April 11, 2003, because the applicant failed to respond to a request for evidence. The applicant did not file either a motion or an appeal for this application during the requisite timeframe.

The applicant, through counsel, filed a subsequent Form I-821, Application for Temporary Protected Status, on September 12, 2003, under the late registration provisions. The director denied this application on April 22, 2004, because the applicant had failed to provide the proper fingerprint fee. Counsel filed a motion to reopen on May 19, 2004.

The director reopened the application and on February 15, 2005, requested the applicant to submit evidence to establish his eligibility for TPS late registration. The director determined that the record did not contain a response to the February 15, 2005, request; therefore, the director denied the application on May 8, 2005.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on September 12, 2003. Since the initial application was denied on April 11, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 IOI(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 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 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 **CPR** § 244.9(b).

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. 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 **CP.R.** § 244.2(f)(2) above.

On appeal, the applicant states that he provided proof that he had paid the proper fine print fee along with the motion to reopen filed on May 19, 2004. The applicant also states that counsel, _____, mistakenly filed the TPS application as a late registration and it should have been filed as a re-registration application.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. As stated previously, however, since the initial TPS application was denied on April 11, 2003, the instant application cannot be considered as a re-registration. Therefore, this application will be considered only as an initial application filed under the TPS late registration provisions.

A review of the record of the applicant's mother, _____, reflects that the applicant was listed on her asylum application. According to the record, her asylum application was withdrawn on June 10, 2004, and she adjusted status under the NACARA provisions. The applicant has established a qualifying relationship to be eligible for late registration as described in 8 **CP.R.** § 244.2(f)(2). Given that the record fails to reflect any other ineligibility issues, the director's decision to deny the current application 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.