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U.S. Department of Homeland Security
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Washington, DC 20529



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

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 09 2008

[consolidated herein]

[WAC 05 224 82450]

INRE:

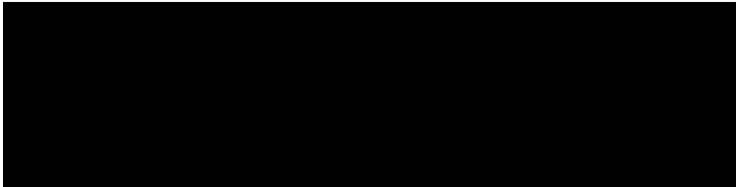
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 director denied the application because the applicant had failed to establish that he was eligible for late registration.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 CF.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 CF.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.

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 May 12, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 CF.R. § 244.2(f)(2) (listed 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 CF.R. § 244.9(b).

The director determined that the evidence submitted by the applicant in response to the Notice of Intent to Deny dated February 5, 2006, was insufficient to establish eligibility for TPS late registration. The director noted that a final order of removal was issued on February 5, 1998, and there is no record that the applicant filed a TPS application within a 60-day period immediately following the expiration or termination of the conditions described in 8 CF.R. § 244.2. Therefore, the director denied the TPS application on May 30, 2006.

On appeal, counsel asserts that the applicant is eligible for late registration because he had a NACARA application pending during the initial registration period, and that the application is yet to be adjudicated.

A review of the record of proceeding indicates that on April 2, 1988, the applicant filed Form 1-589, Request for Asylum in the United States. On June 16, 1995, the applicant filed another Form 1-589 as an "ABC Class Member." On October 27, 1997, the asylum application was denied. In removal proceedings held on February 5, 1998, the applicant failed to appear; therefore, the Immigration Judge (IJ) determined that the applicant had abandoned any pending applications and ordered the applicant removed to El Salvador *in absentia*. A Form 1-205, Warrant of Removal/Deportation, was issued on February 11, 1998. On April 19, 2002, during the initial registration period for El Salvadorans, the applicant filed Form 1-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). Counsel, on appeal, furnished a copy of an "Acknowledgement of Receipt" dated April 24, 2002, advising the applicant that the INS had received the Form 1-881 application and fee. The Form 1-881 is pending adjudication by the Asylum Office.

The record also contains a Motion to Reopen removal proceedings filed by the applicant on April 9, 2007, claiming that the Notice to Appear was sent to an incorrect address, and he did not receive the notice. On July 12, 2007, the IJ ordered that removal proceedings be reopened.

Accordingly, the applicant has established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(t)(2)(ii). The sole ground for denial of the application has been overcome. 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. Here, the applicant has met this burden.

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