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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

Date: JAN 10 2008

[WAC 05 125 79796]

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 California Service Center. 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, and is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a 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 an initial TPS application on January 20, 2005, under CIS receipt number WAC 05 125 79796. The director denied the application because the applicant failed to establish eligibility for late initial registration, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his TPS application. The applicant filed this appeal.

On appeal, counsel reasserts that the applicant is eligible for TPS, and states that the applicant's prior representative failed to submit necessary documentation in support of the applicant's TPS application.

It is noted that counsel stated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed July 17, 2005, that he needed an additional 60 days to submit an appeal brief. However, the record does not reflect receipt of an appeal brief. Also, counsel does not submit any additional evidence on appeal. Therefore, the record must be considered complete.

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 as 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on January 20, 2005, after the initial registration period for El Salvadorans.

To **qualify** for late registration, the 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.P.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 CIS. 8 C.P.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.P.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late initial registration of TPS.

It is noted that the record reveals that on November 23, 2004, an immigration judge issued an order granting the applicant voluntary departure on or before March 23, 2005. The immigration judge also specified that the applicant may move to reopen if evidence is offered of the applicant's TPS status. Accordingly, at the time of filing his TPS application, the applicant had an application for relief from removal which was pending or subject to further review or appeal.

Therefore, the applicant has met one of the regulatory requirements for late initial registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status for this reason will be withdrawn.

The next issue in this proceeding is whether the applicant has established the requisite continuous residence and continuous physical presence.

The record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his TPS application, February 2, 2005. The record contains documentation, including evidence of the applicant's asylum application and related proceedings, earnings statements and payroll-related records, which cumulatively establishes the requisite continuous residence and continuous physical presence. Consequently, the director's decision to deny the application for temporary protected status for these reasons will be withdrawn.

In addition, the record does not reflect any grounds that would bar the applicant from receiving TPS. The record of proceedings does not reveal any derogatory information. The record of proceedings contains a photo ID in the form of the applicant's photo Cedula. Therefore, the application will be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

**ORDER:** The application is reopened and the director's denial of the application is withdrawn. The application is approved. The appeal is sustained.