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**U.S. Citizenship
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Services**

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 18 2008**

[EAC 07 002 73727]

INRE:

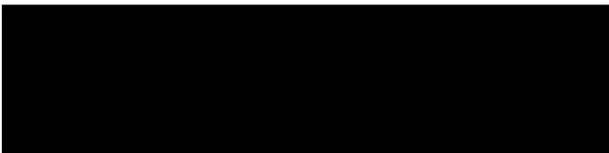
Applicant:



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.

I Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 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 that he was eligible for late registration, and because he had failed to overcome the findings in a previous decision.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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
 - (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.

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 the current TPS application with Citizenship and Immigration Services (CIS) on October 2, 2006.

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 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 c.F.R. § 244.9(b).

The record of proceedings shows that the applicant filed his initial TPS application on April 24, 2001, under CIS receipt number EAC 01 159 51624. That application was denied by the director on May 15, 2002, due to abandonment, because the applicant failed to report for fingerprinting as scheduled. The applicant filed another application on September 1, 2002. That application was not acted upon as it was treated as a re-registration application.

The record also shows that the applicant filed another TPS application on September 13, 2003, under CIS receipt number EAC 03 258 51306. That application was initially denied by the director on March 3, 2004, because the applicant failed to establish his eligibility for TPS. The applicant appealed that decision to the AAO. The AAO remanded the case to the VSC for the issuance of a decision that specifically addressed the reasons for denial. On October 19, 2006, the VSC director denied the application because the applicant failed to establish his eligibility for late registration.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on October 2, 2006.

The director denied the application on April 4, 2007, determining that the applicant had failed to provide any additional information to overcome the original grounds for denial, and had therefore failed to establish that he was eligible for late registration.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant's second application also was filed during the initial registration period. A decision was not rendered on that TPS application as it was treated as a re-registration application. Therefore, the application was filed during the initial registration period. Consequently, the applicant has overcome the sole reason for the director's denial. However, the applicant failed to appear for his fingerprinting appointment, as required.

It is noted that the applicant failed to disclose in his application that he was apprehended by U.S. Border Patrol officers on September 30, 2004, at or near Falfurrias, Texas, and placed under removal proceedings under file number _____ — At that time, the applicant told the apprehending officers that he was entering the United States to live with his brother in Virginia, and to seek employment in the area. The applicant also failed to disclose that he had a TPS application that was under appeal at the AAO.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, 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.

There is no evidence in the record of proceeding to show that the applicant had advance permission to leave the United States (1-512 Advance Parole status) or that his absence was brief, casual, and innocent. The applicant failed to disclose to the officers that he had left the United States without advance permission. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ro*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The evidence submitted fails to document the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is also noted that the Immigration Judge administratively closed removal proceedings on June 7, 2005, stating "-for TPS" only.

An alien applying for TPS 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 failed to meet this burden. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.