

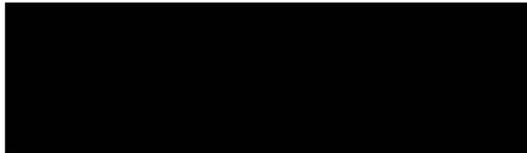
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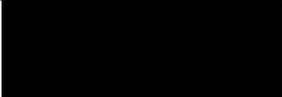


U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 23 2008

consolidated herein]
[EAC 07 104 52692]

INRE:

Applicant:

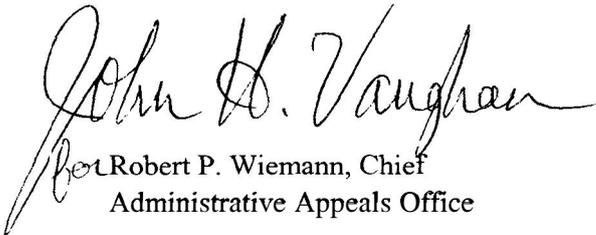


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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

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 director denied the application because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant failed to establish his qualifying continuous residence" and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a statement and additional documentation.

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 is eligible for Temporary Protected Status 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
- (t)
 - (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 phrase continuously physically present, as defined in 8 C.F.R. § 244.1, 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.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, 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.

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.

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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on September 7, 2002 (EAC 03 014 51650 relates). The application was denied on January 6, 2006, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant did not file an appeal from that decision.

The applicant filed another Form 1-821 on March 5, 2007 [EAC 07 10452692], and indicated once again that it was an initial application for TPS. Since it was filed after the close of the initial registration period, the application can only be considered as a new filing for TPS benefits under the provisions of late registration.]

The director determined that the applicant failed to establish he was eligible for late registration, and failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the second application for TPS on April 11, 2007. The applicant filed his appeal from that decision on May 3, 2007.

On appeal, the applicant asserts that he has been continuously physically present and continuously resident in the United States since his latest entry without inspection in February 2000. He further asserts that he is eligible for late registration because he withdrew his application for political asylum and was granted voluntary departure from the United States by an Immigration Judge (D) due to his marriage to a United States citizen. The applicant's claims are not persuasive.

A review of CIS records reveals the following:

1. On or about October 30, 1990, the applicant entered the United States without inspection.
2. On January 31, 1992, a TPS application (filed by the applicant during an earlier designation of El Salvador for TPS) was denied.
3. On September 21, 1992, the applicant filed a Form 1-589, Request for Asylum in the United States.
4. On March 2, 1999, the applicant withdrew his Form 1-589.
5. On March 22, 1999, the applicant married a United States citizen.
6. On March 23, 1999, an IJ in New York, New York, granted the applicant voluntary departure from the United States on or before May 24, 2000, with an alternate order of removal to El Salvador if he failed to depart.
7. On March 24, 2000, the applicant returned to El Salvador.
8. On March 25, 1999, the applicant's spouse, a U.S. citizen, filed a Form 1-130, Petition for Alien Relative, on the applicant's behalf.
9. On July 18, 2002, the Form 1-130 was denied.

The applicant has failed to provide any evidence that **during the initial registration period (from March 9, 2001, through September 9, 2002)** he had been granted voluntary departure, had a request for asylum pending, was married to an alien currently eligible to be a TPS registrant, or otherwise fulfilled any of the conditions described in 8 C.F.R. § 244.2(t)(2). Consequently, the director's decision to deny the application on the ground that the applicant failed to establish his eligibility for late registration will be affirmed.

1 If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 c.F.R. § 244.17. Since the applicant's initial Form 1-821 was denied, the second application cannot be considered as an application for annual re-registration.

The applicant claims to have lived in the United States since an unspecified date in February 2000. In support of this claim, the applicant has submitted an affidavit from an acquaintance and documentation dated on or after October 17, 2001.

It is concluded that the applicant has not submitted sufficient objective evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing his application on March 5, 2007. Therefore, he has failed to establish that he meets the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will also be affirmed.

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 enumerated 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.