



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: JUL 07 2008
[EAC 07 265 72124]

IN RE: Applicant: [REDACTED]

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

The applicant is stated to be 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asks CIS to grant him 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 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
- (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 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 in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on June 18, 2007. 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.

On August 30, 2007, the applicant was requested to submit a final court disposition regarding his arrest on December 21, 2006, by the Police Department of Los Angeles, under the name [REDACTED]. The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. **The applicant, in response, provided documentation relating to his residence and physical presence in the United States.**

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 26, 2007.

On appeal, the applicant states that he is applying for TPS because he was placed in removal proceedings. He further states that he will have a master calendar hearing before an Immigration Judge on November 3, 2008.

The director stated in the denial decision that the applicant had failed to establish his eligibility for late initial registration; however, the applicant had a pending asylum application as of July 25, 1995. The applicant has, therefore, met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be withdrawn.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

1. A copy of a Notice of Hearing in Removal Proceedings dated October 5, 2007;
2. A copy of a court document from The Superior Court of California County of Los Angeles dated September 17, 2007;
3. A copy of a report card from Bethune Middle School for the year 2001 for [REDACTED];
4. A copy of a Student Progress Report from Holcomb High School dated October 15, 2001 for [REDACTED];
5. A copy of a report card for the second semester from Holcomb Middle School for the period from January 4, 2000 to May 24, 2000, for [REDACTED];
6. A copy of a certificate of Diploma from Mary M. Bethune Middle School issued to [REDACTED] dated June 30, 2001; and,
7. A copy of a 2006 Form W-2, Wage and Tax Statement, for [REDACTED]

Along with his I-821, Application for Temporary Protected Status, the applicant submitted the following documentations:

8. A copy of an El Salvadoran birth certificate and an English translation;
9. A copy of his employee ID from Triumph Foods dated February 20, 2006;
10. A copy of his Immunization record; and,
11. Copies of his employment authorization cards valid from December 21, 2006 to December 20, 2007, and August 5, 2005 to August 4, 2006.

The applicant also submitted a letter from The Superior Court of California County of Los Angeles indicating that there was no record upon the applicant's inquiry concerning a Felony/Misdemeanor criminal record in the court. However, the fact that the Court does not have a record does not mean the applicant was not convicted. It is noted that the report the applicant provided indicates that the search was made under the names [REDACTED] and [REDACTED]. The burden is on the applicant to provide affirmative evidence that he is eligible for

the benefit sought. As of this date, the applicant has failed to submit the final court dispositions for his arrest on December 21, 2006, by the Los Angeles Police Department, under the name [REDACTED] and charged with 001 COUNTS OF SEX W/MINOR, 3+ YRS YOUNGER.

In addition, the applicant claimed to have been in the United States since May 15, 1989. It is reasonable to expect that he would have sufficient contemporaneous evidence to support that assertion; however, no such evidence has been provided. The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Beyond the decision of the director, the applicant submitted a copy of an El Salvadoran birth certificate which appears to have been altered to show his name. The applicant has not established his nationality and, therefore, the application also must be denied for this reason.

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 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.

ORDER: The appeal is dismissed.