

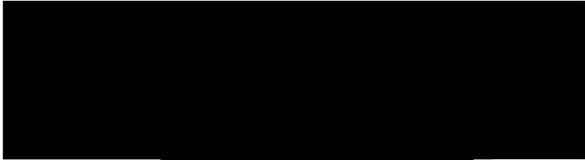


U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 2008

[WAC 06 266 54818, *appeal*]

[WAC 03 04750853]

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 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 now before the Administrative Appeals Office on appeal. The case will be remanded.

The applicant is stated to be 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 applicant filed an initial Form 1-821, Application for Temporary Protected Status, under receipt number WAC 03 047 50853 after the initial registration period had closed. The director denied that application on August 3, 2006, after determining that the applicant had failed to establish he was eligible for late initial registration and because the applicant had not met the continuous residence and continuous physical presence requirements for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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.

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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on November 14, 2002.

To qualify for late registration, an 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.F.R. § 244.2(f)(2) above.

On June 22, 1998, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. On August 7, 2002, the Director of the San Francisco Asylum Office sent the applicant a referral notice informing him that his case had been sent to an Immigration Judge (IJ), with the recommendation that his request for asylum be denied. The Asylum Office Director also informed the applicant that the notice was not a denial of his asylum application and that he could reopen his claim before the D. As the applicant had an application for asylum pending on November 14, 2002, he is eligible for late initial registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision is not affirmed for this reason.

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.

As stated above, the applicant filed a Form I-589 on June 22, 1998. The record reflects that on the basis of that application, he was issued Forms I-766, Employment Authorization Card(s), valid from March 2, 1999 expiring on March 1, 2000, March 2, 2000 expiring on March 1, 2001 and from March 2, 2003 expiring on March 1, 2003.

Some of the documents in the record showing the applicant's continuous residence and continuous physical presence during the required periods from February 13, 2001 until November 14, 2002 are listed below:

1. Copies of the applicant's IRS Forms 1040EZ, U.S. Income Tax Return for Single and Joint Filers With No Dependents for the years 2001 and 2002.

2. A copy of a criminal complaint filed against the applicant in the Municipal Court of the City of Reno, Nevada, dated May 3, 2001, and the applicant's own recognizance release request form from the Washoe County Sheriffs Office in Nevada dated May 4, 2001. A copy of the court disposition documenting his conviction for the crime of obstructing and resisting, a misdemeanor, indicating that the case was closed on October 8, 2001 by a Municipal Judge in the Municipal Court of the City of Reno, County of Washoe, State of Nevada.
3. The applicant's Wells Fargo account statement in Nevada from July 16, through August 14, 2002.
4. The applicant's Social Security Statement dated January 27, 2006 showing that he had Social Security earnings for each year from 1999 through 2004.

After review of the record, it is determined the applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in the regulations at 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision is not affirmed for these reasons.

It is noted that on February 12, 2003, the applicant was granted the opportunity to voluntarily leave the United States by June 12, 2003 by an Immigration Judge in Las Vegas, Nevada. The judge's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to El Salvador. The record does not show that he departed this country as ordered.

Although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

Additionally, the applicant's Federal Bureau of Investigation fingerprint results report shows that on November 15, 2007, he was arrested by the Police Department in Reno, Nevada, and charged with driving under the influence of alcohol. The applicant has not provided a copy of the court disposition for this charge for the record.

In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.c. § 1361.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.