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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: MAR 21 2008

[EAC 0229451318 and
EAC 03 138 50674]

INRE:

Applicant:

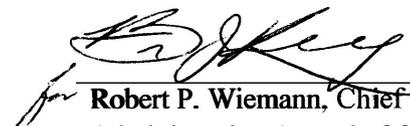
APPLICATION:

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.


for 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 sustained. The decision of the director will be withdrawn, and the application will be approved.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 director denied the application because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel for the applicant submits a brief 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:

- (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 § 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 (t)(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.

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(t)(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).

On October 6, 2004, and again on November 17, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(t)(2). The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided documentation relating to his residence and physical presence.

The director determined that the applicant had failed to submit any evidence to establish his eligibility for late registration and denied the **application** on January 18, 2005. The applicant filed his current appeal from that decision on February 15, 2005. On appeal, counsel for the applicant asserts that the applicant was erroneously informed of the requirement to prove eligibility for late initial registration and that a TPS application the applicant had filed during the initial registration was still pending.

The record reveals that the applicant filed his Form 1-821, Application for Temporary Protected Status, under receipt # EAC 02 29451318, on September 9, 2002. A Form 1-797, Notice of Action, was mailed to the applicant on September 26, 2002, indicating that his application was received and that the "fee [was] previously collected." The application was then returned to the applicant, via another Form 1-797, on December 9, 2002. This Form 1-797 stated "the check you submitted has an incorrect amount, is not signed, or the numerical and written amount do not match...." The applicant was requested to correct the insufficiencies and resubmit the application. The applicant re-submitted the application on January 18, 2003, at which time it was received under a different receipt number - # EAC 03 138 50674.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reflects that the applicant registered for TPS on September 9, 2002 - during the initial registration period. The record includes substantial documentary evidence to establish the applicant's identity and El Salvadoran nationality, as well as his continuous physical presence in the United States since March 9, 2001, and his continuous residence in the United States since February 13, 2001, as required under 8 C.F.R. § 244.2(a), (b), and (c) for TPS applicants from El Salvador. The record does not reveal that the applicant is inadmissible to the United States on any other grounds. Therefore, the applicant has established his eligibility for TPS in accordance with section 244(c) of the Act and 8 C.F.R. § 244.2. Accordingly, the appeal will be sustained. The director's decision denying the application will be withdrawn, and the application will be approved.

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

ORDER: The appeal is sustained. The decision of the director is withdrawn, and the application is approved.