

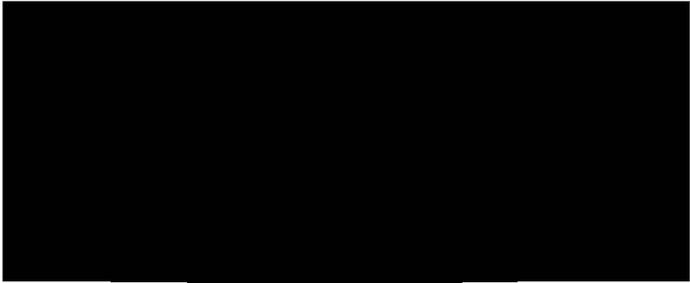


**U.S. Citizenship
and Immigration
Services**

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invasion of personal privacy**

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FILE:



Office: California Service Center

Date:

MAR 252008

[WAC 01 28957809]

[WAC 05 14770794]

INRE:

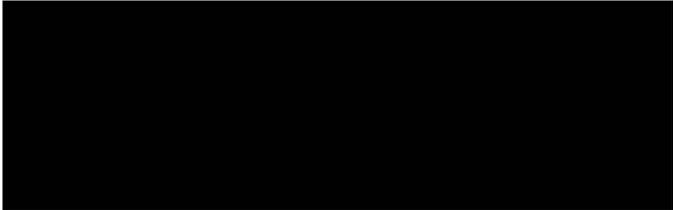
Applicant:



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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The re-registration application was denied by the Director, California Service Center (CSC). An appeal was dismissed by the Chief, Administrative Appeals Office (AAO). A motion to reopen was dismissed by the AAO. The matter is now before the AAO on a subsequent motion to reopen. The case will be reopened and the appeal will again 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 applicant, through then counsel [REDACTED], filed an initial application for TPS, under receipt number WAC 01 289 57809, on September 11, 2001. The director denied that application on August 12, 2004, because the applicant failed to appear for his scheduled fingerprint appointment.

On January 30, 2005, the applicant filed the current TPS re-registration application. The director denied this application on May 9, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for TPS re-registration.

An appeal from the director's decision was dismissed on June 28, 2006, after the AAO concluded that the applicant was not eligible to re-register for TPS. The AAO also determined that the applicant failed to show that the current application should be accepted as a late initial registration. In addition, the AAO determined that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On September 1, 2006, the applicant submitted a motion to reopen which was dismissed by the AAO on May 21, 2007. On June 22, 2007, counsel submits a subsequent motion to reopen which is now before the AAO.

On motion to reopen, counsel asserts the applicant's eligibility 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 TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity 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).

In his motion, counsel states that the applicant's previous counsel _____ mishandled the applicant's case causing him to miss his scheduled fingerprint appointment on February 27, 2004. Counsel also asserts that the applicant did not "willfully" miss his scheduled fingerprint appointment; however, the applicant's previous counsel indicated an incorrect zip code on the TPS application.

A review of the record of proceedings reflects that the applicant [redacted] for employment authorization filed on October 2, 2002, that he had resided at [redacted] Tempe, Arizona, [redacted] zip code" however, on his TPS application filed at the same time, the applicant indicated his zip code as [redacted], the Director sent the fingerprint appointment notice to his then-current address using the zip code [redacted]. Further, a review of the record also reflects that the applicant was subsequently fingerprinted on April 3, 2006.

Beyond the decision of the director, the applicant is not eligible for TPS because he failed to establish his qualifying continuous residence in the United States, and his continuous physical presence in the United States. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003); see also *Dar v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Counsel also asserts that the applicant has established his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel further states that the applicant first entered the United States on July 21, 1996, without inspection at Nogales, Arizona. To establish the applicant's qualifying continuous residence in the United States, counsel refers to an employment letter from [redacted] of [redacted] stating that applicant had been employed since June 1, 1998. Counsel also notes that the residence covers periods for 1997 to the present.

However, a review of the documentation contained in the record reflects significant discrepancies.

The record contains several copies of earnings statements from [redacted] dated April 8, 2000, through June 23, 2001, bearing [redacted] and social security number [redacted]. Although the employment letter from [redacted] states that the applicant initially used the name of [redacted], the applicant has provided no credible evidence to establish the legal use of the alias [redacted]. Evidence of the use of two names may include, but not limited to, a marriage certificate or court document registered with the proper civil authorities. In addition, the applicant claimed on his applications for TPS and employment authorization that his social security number is [redacted]. However, the social security number found on the earnings statements is [redacted]. Furthermore, the applicant provided copies of his El Salvadoran government issued birth certificate and passport bearing the name [redacted]. As such, only evidence bearing his name [redacted] will be considered in these proceedings.

The documentation has a significant gap between the beginning of the requisite time periods for continuous residence and continuous physical presence and October 2002, reflected on the earnings statements from [redacted]. In addition, the record contains copies of Urgente Express receipts dated March 30, 1997, July 18, 1998, and December 15, 1998, all pre-dating the requisite time periods for continuous residence and continuous physical presence by over two years.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States, and his continuous physical presence in the United States during the requisite time periods. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the applicant is not eligible for TPS and the application cannot be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met.

ORDER: The appeal is dismissed.