

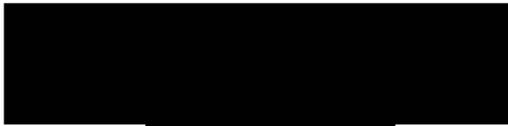


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

M 1



FILE: [REDACTED]
[EAC 05 209 84563]

Office: VERMONT SERVICE CENTER

Date: **MAY 12 2008**

INRE: Applicant:

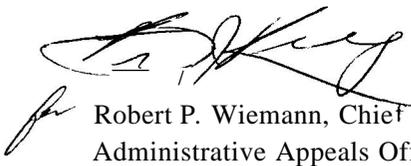


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont Service Center. 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 sustained.

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 determined that the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director also determined that the applicant failed to provide requested final court dispositions for his arrests. The director, therefore, denied the application.

On appeal, the applicant states that he has only been arrested once, on January 29, 2002, and that he did submit the requested final court disposition for this arrest.

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

The record reveals that the applicant did file an initial application for TPS during the initial registration period on August 31, 2002. That application was denied as abandoned on January 26, 2000, for failure to respond to a request for evidence to establish his eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent re-registration Form 1-821, Application for Temporary Protected Status, on September 18, 2002 and indicated he was submitting a re-registration application. The director treated the application as a re-registration application and denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. In addition, the director determined that the applicant failed to submit requested court documentation relating to his criminal record. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form 1-821 was properly filed on August 31, 2002. That initial application was denied by the director on June 20, 2003. Any Form 1-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form 1-821 on February 27, 2005. Since the initial application was denied on June 20, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 as designated by the Attorney General 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.

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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

A Federal Bureau of Investigation (FBI) fingerprint results report indicates the following offenses:

- (1) On January 29, 2002, the Howard County Police Department, Ellicott City, arrested the applicant for two charges of "Weapons Violation."
- (2) On April 12, 2002, the Howard County Police Department, Ellicott City, arrested the applicant for "Discharge of Guns."

On July 18, 2006, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2); his continuous residence and continuous physical presence during the qualifying period; and, the final court dispositions relating to his criminal record. The applicant, in response, provided evidence of his continuous residence and continuous physical presence in the United States, and provided the final court disposition for his January 29, 2002 arrest and evidence that he had only been arrested once. The applicant also submitted a statement in which he asserted that he initially applied for TPS during the first registration period. The director denied the application on May 1, 2007.

On appeal, the applicant again stated that he had only been arrested once, on January 29, 2002, and had not been arrested on April 12, 2002. In support of this claim, the applicant submits:

1. A certified copy of the applicant's Criminal System Inquiry Case History Display from the District Court of Maryland for Howard County. That document indicates that the applicant was arrested on January 29, 2002, and that on April 9, 2002, the applicant failed to appear for a scheduled court date. The Case History Display also indicates that on April 12, 2002, the applicant was committed and that on April 13, 2002, the applicant was released from commitment. On May 6, 2002, the applicant's attorney requested that the charges against the applicant be consolidated. On July 9, 2002, the prosecution of the charge "Discharge of Guns", was suspended and placed on a stet docket.
2. A criminal history record from the State of Maryland Department of Public Safety and Correctional Services, Information Technology & Communications Division, Criminal Justice Information System – Central Repository issued on August 7, 2006. That document indicates that the applicant was arrested once, on January 29, 2002, by the Howard County Police Department and that the case was turned over to another agency.

This documentation indicates that the applicant was only arrested once and was not convicted of any crime.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the April 27, 2005 application for re-registration or renewal, as filed outside of the initial registration period and the applicant's failure to submit requested court documentation relating to his criminal record, is dependent upon the adjudication of the initial application as abandoned. Since the initial application should have been approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved. The applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

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 applicant has met this burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.