

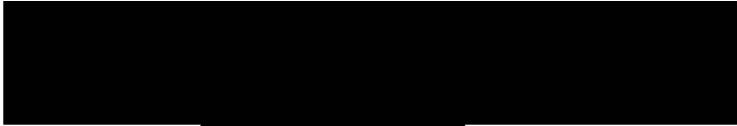


U.S. Citizenship
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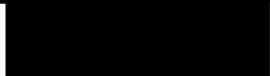
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 23 2008

[WAC 05 216 80028]

[WAC 08 034 50406 MOTION]

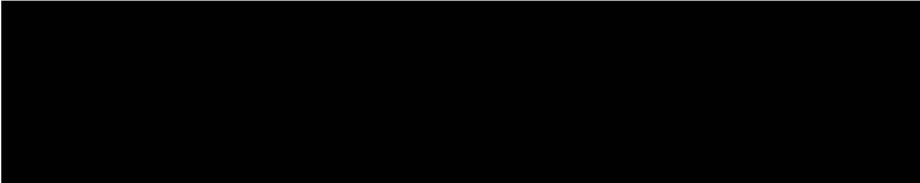
INRE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The director also denied the applicant's motion to reconsider. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The case will be reopened and the appeal will again be dismissed.

The applicant claims 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.

A subsequent appeal from the director's decision was dismissed on October 2, 2007, after the AAO also concluded that the applicant had failed to establish that he was eligible for late registration. On motion to reconsider, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his eligibility for 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 designated by the Attorney General 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.

Persons applying for TPS offered to E1 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. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on May 4, 2005.

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.

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 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).

On February 27, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In her March 16, 2006, letter accompanying the applicant's response to the Notice of Intent to Deny, counsel stated that the applicant was a "derivative of his mother's application," and submitted copies of employment authorization cards, showing that both mother and son were eligible for employment based on her status as an asylum applicant through 2004. Counsel stated that the mother's application was terminated in February 2005, when she was approved for permanent resident status under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 4, 2006. In an August 3, 2006, motion to reconsider, counsel again stated that the applicant was eligible for late registration due to his derivative status based on his mother's application. Counsel asserted that the applicant filed for TPS within 60 days following the lapse of his derivative status. Counsel noted that the applicant's own asylum application was administratively closed on March 16, 1999, "due to [the] applicant's derivative asylum status." The director dismissed the motion and again denied the

application, noting that the mother withdrew her application on November 16, 2004, and that the applicant filed his request for TPS after the 60-day deadline outlined in 8 C.F.R. § 244.2(g).

On appeal, counsel alleged error based on a misstatement of material facts and an improper application of law and policy. Counsel indicated on the Form 1-290B, Notice of Appeal to the Administrative Appeals Office, that she would submit a brief and/or additional evidence within 30 days of filing the appeal. However, the AAO received no additional documentation before issuing its decision dismissing the appeal on October 2, 2007. The AAO noted that a review the record for the applicant's mother reveals that she withdrew her application for asylum on July 15, 2004, and was granted permanent residence on November 16, 2004. According to the AAO decision, the applicant should have filed for TPS within 60 days of the mother's withdrawal of her asylum application on July 15, 2004. A further review of the mother's record, however, reveals that the applicant's mother withdrew her asylum application on November 16, 2004, upon approval for permanent residence. Accordingly, the applicant was required to file for TPS within 60 days following November 16, 2004, or no later than January 6, 2005. The applicant filed his application on May 4, 2005.

On motion, counsel asserts that the applicant has a pending asylum application, which he filed as a principal. Citing *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996), counsel further asserts that the administrative closure of the applicant's asylum application on March 16, 1999, did not terminate the application, and that it is still pending. The applicant's asylum application, however, was administratively closed to be consolidated with the mother's application. Therefore, when his mother withdrew her asylum application, she, in effect, also withdrew the applicant's application. Accordingly, the applicant did not have a separate pending asylum application during the initial registration period. The applicant no longer had a pending asylum request when his mother withdrew her asylum application on November 16, 2004, following her approval under NACARA. The applicant failed to file his TPS application no later than January 6, 2005, 60 days after the closure of his asylum application.

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.