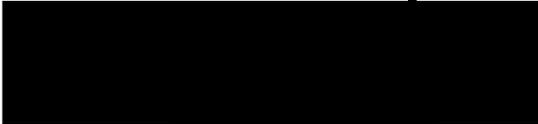




U.S. Citizenship
and Immigration
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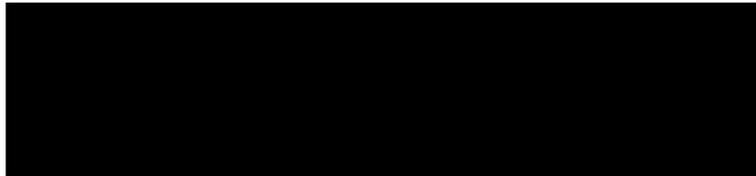
OFFICE: California Service Center

DATE: MAY 22 2007

[WAC 06 011 70474]

IN RE:

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. 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 denied the application on the ground that the applicant failed to establish he was eligible for late registration since his TPS application was filed more than 60 days after the denial of his asylum application.

On appeal, the applicant asserts that the late filing of his TPS application was beyond his control because he was never informed by the Asylum Office in Los Angeles that his asylum case was closed.

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 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.

El Salvadoran nationals applying for TPS 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 reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on October 11, 2005, which was more than three years after the close of the initial registration period for TPS applicants from El Salvador. On March 1, 2006, the CSC issued a Notice of Intent to Deny (NOID) requesting the applicant to submit evidence that he qualified for late registration in accordance with the provisions of 8 C.F.R. § 244.2(f)(2) and (g).

On April 13, 2006, the director denied the application. After noting the applicant's claim in response to the NOID that his asylum application was still pending when he filed his TPS application, the director cited CIS records indicating that the asylum application had been denied on July 27, 2005. Since the applicant did not file his TPS application until October 11, 2005, which was more than 60 days after the end of the applicant's qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2)(ii), the director concluded that the TPS application was not filed within the 60-day window prescribed in 8 C.F.R. § 244.2(f)(g) to qualify for late registration.

The applicant filed a timely appeal, stating that he was surprised to learn from the Vermont Service Center that his political asylum case, which he opened in 1995, had been closed since he never received any notice thereof from the Asylum Office in Los Angeles, California, where the Form I-589 had been filed. The applicant requests that his TPS application be regarded as timely filed because its filing after the 60-day deadline "was beyond my control."

The burden of proof is upon the applicant to establish that he or she meets the requirements discussed above. Applicants shall submit all documentation as required in the instructions or requested by CIS. *See* 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. *See* 8 C.F.R. § 244.9(b).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the qualifying conditions described in 8 C.F.R. § 244.2(f)(2) above, and that he filed his TPS application within 60 days of the end of that qualifying condition, as prescribed in 8 C.F.R. § 244.2(g). The applicant asserts that he qualified for late TPS registration based on the asylum application (Form I-589) he filed

in 1995. The AAO agrees that the asylum application was a qualifying condition for late filing under 8 C.F.R. § 244.2(f)(2)(ii).

The record shows that the applicant, who claims to have entered the United States without inspection on December 15, 1991, filed an Application for Asylum and Withholding of Deportation at the Western Service Center on October 18, 1995. On June 17, 2005, the Citizenship and Immigration Services (CIS) Asylum Office in Anaheim, California, issued a notice to the applicant to appear on June 30, 2005, for an interview on his eligibility for asylum. The notice was addressed to the applicant at an old address on [REDACTED] in Silver Spring, Maryland. CIS records indicate that the asylum case was closed on July 27, 2005.¹ The applicant states that he did not learn of this action until he received a decision from the Vermont Service Center, dated September 29, 2005, denying an Application for Employment Authorization (Form I-765) on the ground that his asylum application had been denied. The decision on the I-765 application (sent to the applicant's correct address) stated as follows with regard to the asylum application: "Service records indicate that [your] asylum application was denied on July 27, 2005, by the Los Angeles Asylum Office, due to the applicant's failure to appear for a scheduled interview on June 30, 2005."

Documentation in the record, including annual federal tax returns for the years 2000 to 2004, indicate that the applicant moved from the [REDACTED] to his current address in Silver Spring sometime during the year 2002. CIS records show that this address change was known to the Service, since an I-765 application received on October 1, 2001, identifies the applicant's address as [REDACTED], in Silver Spring, Maryland, while the next I-765 application received on September 6, 2002, identifies the applicant's address as [REDACTED] in Silver Spring, Maryland – his current address. Thus, the CIS Asylum Office in Anaheim, California, erred in sending its interview notice in June 2005 to the applicant's old address. CIS records show that the asylum application was closed, but do not indicate that a formal decision was issued. The applicant's statement that he was never directly informed by the Asylum Office that his case was closed and that he first learned about it in the California Service Center's decision on his I-765 application, which was correctly sent to the applicant's current address, is credible. This conclusion is further supported by the fact that the applicant's last one-year extension of employment authorization, based on his asylum application, had an expiration date of November 21, 2005. The AAO notes that the date of the decision on the I-765 application – September 29, 2005 – was already more than 60 days after the asylum application was closed.

The AAO agrees with the applicant's claim, therefore, that the filing of his current TPS application outside the 60-day window allowed for late initial registrations under 8 C.F.R. § 244.2(g) resulted from the Asylum Office's error in sending its interview notice to an incorrect address and closing the Form I-589 application without notifying the applicant. Once he learned that his asylum application had been closed, in the Form I-765 decision issued by the Vermont Service Center, the applicant moved expeditiously to file a TPS application. The Form I-821 and supporting materials were mailed to the CSC on October 8, 2005, just nine days after the decision on the Form I-765 application was issued, and when received at the CSC on October 11, 2005, the application was duly filed. Since the TPS application was filed well within 60 days of the date he first received information about the termination of his asylum application, the applicant has complied with the time limit prescribed in 8 C.F.R. § 244.2(g) for filing a late initial TPS registration.

¹ The AAO notes that there is no denial and/or termination notice of the asylum application within the record.

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. 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 director's decision denying the application will be withdrawn. The appeal will be sustained and the TPS application will be approved.

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 met that burden.

ORDER: The director's decision of April 13, 2006, is withdrawn. The appeal is sustained.