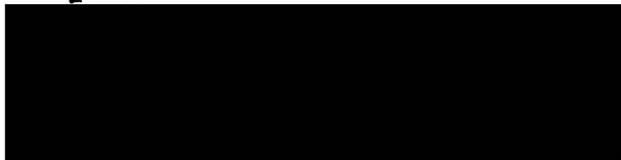


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and Immigration
Services

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FILE:



[WAC 03 179 53826]

OFFICE: California Service Center

DATE:

MAY 29 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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 that he was eligible for late TPS registration.

On appeal the applicant requests that his case be reviewed.

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 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.

The phrase 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.

The phrase 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.

El Salvadoran nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on May 27, 2003 – approximately eight and one-half months after the end of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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 Citizenship and Immigration Services (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).

On March 17, 2004, the service center requested the applicant, who claims to have entered the United States without inspection on January 20, 2000, to submit evidence that he was eligible for late registration; that he met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador; as well as evidence of his nationality and identity. On April 16, 2004, the applicant responded with additional documentation pertaining to his residence and physical presence in the United States, as well as his nationality and identity.

On April 23, 2004, the director issued a Notice of Decision, finding that the evidence of record established the applicant's continuous residence and continuous physical presence in the United States since the dates

applicable for TPS applicants from El Salvador, as well as his nationality and identity, but denying the application on the ground that the applicant failed to establish that he was eligible for late TPS registration.

The applicant filed a timely appeal, but has submitted no further documentation.

In a handwritten letter accompanying his initial TPS application, dated May 20, 2003, the applicant asserted that he had already submitted a TPS application on September 7, 2002. As evidence thereof he submitted a photocopy of a certified mail receipt addressed to the California Service Center and stamped September 7, 2002. The receipt does not identify the sender, however, and does not identify the contents of the package. Moreover, the California Service Center has no record of receiving a TPS application, or any other communication from the applicant, until May 27, 2003, when the pending Form I-821 was received. The AAO also notes that the applicant indicated on the Form I-821 he filed in May 2003 that it was his first application to register for TPS, not his second.

Thus, the evidence of record does not substantiate the applicant's claim that he filed his initial TPS application on September 7, 2002 – which was two days before the end of the initial registration period on September 9, 2002. The record shows that the applicant filed his initial TPS application on May 27, 2003, eight and one-half months after the close of the initial registration period, and the applicant has not established that he was eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The director's denial of the application on this ground will therefore be affirmed.

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 that burden.

ORDER: The appeal is dismissed.