



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

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FILE: [REDACTED]
[EAC 07 00272391]

OFFICE: Vermont Service Center

DATE: **FEB 01 2008**

INRE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8U.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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will 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 and because he had failed to provide information necessary to adjudicate his application.

On appeal, the applicant claims through counsel that he is eligible for TPS.

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 El 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 October 2, 2006.

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 March 7, 2007, 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). The applicant was also requested to submit evidence with regard to charges on his criminal record. The applicant did not file a timely response.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 20, 2007. On appeal, counsel asserts that the applicant told an asylum officer he was not eligible for NACARA, and that he was told there would be further review of his application.

The record does not support counsel's version of events. The record contains a copy of the notice sent to the applicant which states that the reason for the interview was his eligibility for asylum and withholding of removal. The letter also explained that some applicants may be eligible for NACARA, and that failure to appear for the interview could result in the denial of their benefits. The notice states in part:

You may also be eligible to apply for relief under NACARA 203 If you intend to apply for NACARA relief, please let asylum office personnel know when you appear for your scheduled interview.

The applicant did not show up for his scheduled interview and the application was denied on August 8, 2005. Thus counsel's version of the facts is untrue and based on a sloppy misreading of the interview notice. There is no evidence that the applicant spoke with any asylum officer or attempted to contact the service with regard to his interview, despite the information being printed clearly on the interview notice. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS*

v. *Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter a/Ramirez-Sanchez*, 17I&N Dec. 503 (BIA 1980). In addition, the issuance of an interim benefits Employment Authorization Document (EAD) is a privilege to accommodate the needs of applicants during the pendency of their applications and in no way reflect on the merits of their underlying applications. Counsel's assertions are incorrect as a matter of law.

The applicant's application for asylum was denied on August 8, 2005. In order to be eligible for filing a late registration on this basis the applicant must have filed his application for TPS by October 7, 2005. As stated above the applicant did not file his application for TPS until October 2, 2006. Consequently, the director's decision to deny the application for TPS on this basis will be affirmed.

On appeal the applicant submitted a copy of the court record with regard to his charge of Assault with Corporal Injury to a Spouse in Los Angeles County Superior Court. Counsel blatantly misstates that the charge was dismissed when the record clearly shows the applicant was convicted. Nonetheless, this single misdemeanor conviction does not render the applicant ineligible for TPS, and this portion of the director's decision will be withdrawn. However, the applicant remains ineligible for TPS due to his failure to establish eligibility for a late initial registration.

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.