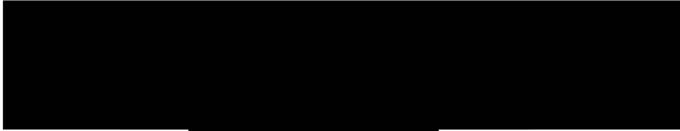


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**U.S. Citizenship
and Immigration
Services**

PUBLIC COpy



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JAN 03 2008**

[WAC 05 221 80292]

INRE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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, Chief
Administrative Appeals Office

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

The applicant is a citizen of El Salvador who seeks 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.

On appeal, the applicant asserts that he did not initially apply for TPS because he was out of status and was afraid that, if he did apply, he would be deported.

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 (t)(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.

Persons applying for TPS offered to 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. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(t)(2) above.

The burden of proof is on 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 record reflects that the applicant filed his initial TPS application on March 7, 2005 – almost three years after the close of initial registration period for Salvadorans. The director accepted the application under the late TPS filing provisions. On his application, the applicant listed his date of entry into the United States as May 15, 2000. In support of his application, the applicant submitted a copy of his birth certificate with

. g translation, and a copy of the Employment Authorization Document (EAD) of [REDACTED] TPS registrant with alien registration number [REDACTED]. The applicant did not indicate what his relationship was to [REDACTED].

On May 24, 2006, the director denied the application as abandoned due to the applicant's failure to report for fingerprinting. The applicant filed a motion to reopen which the director granted.

On January 4, 2007, the director requested that the applicant submit further proof of his qualifying continuous residence and continuous physical presence, a more complete translation of his birth certificate, and acceptable photographs. In response to the director's request, the applicant submitted the identification page of his Salvadoran passport, issued in Washington, D.C., on June 11, 2003; his child's birth certificate, indicating she

was born on November 24, 2004, in Montgomery County, Maryland; a marriage certificate, indicating that he married _____, on December 18 1993 in Moncagua, El Salvador; his wife's EAD; and, four letters from individuals, including _____ attesting to the applicant's presence in the United States since 2001.

On February 26, 2007, the director denied the application, finding that the applicant had failed to respond to the January 4, 2007, request for evidence and had failed to establish his eligibility for late registration.

On appeal, the applicant asserts that he did not initially apply for TPS because he was out of status and was afraid that, if he did apply, he would be deported. He submits six unsigned, undated, unverified Internal Revenue Service (IRS) Forms 1040, Individual Tax Returns from 2001,2002,2003,2004,2005, and, 2006.

The applicant has submitted sufficient documentation to establish that he is the spouse of an alien who is currently eligible to be a TPS registrant. He is, therefore, eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). The director's decision to deny the application on this ground is therefore withdrawn.

The application cannot be approved, however, as a late-filing spouse of a TPS-eligible applicant must meet the same continuous residence and continuous physical presence requirements as all other TPS applicants. Beyond the decision of the director, the AAO finds that the documentation **submitted fails to establish** the applicant's qualifying residence and continuous physical presence. The letter from _____ can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The three other letters are not sworn to, do not provide the affiants' addresses, dates and places of birth, relationships to the applicant, or full information and/or complete details relating to the applicant's continuous residence and continuous physical presence in the United States as required by 8 C.F.R. § 244.9(a)(2)(vi). The tax returns submitted by the applicant can be given little weight as they are not accompanied by IRS Form W-2, Wage & Tax Statements, or certification of filing with the Federal, state or local government, as required by 8 C.F.R. § 244.9(a)(2)(i).

Furthermore, the affidavits and tax returns are not accompanied by evidence to corroborate the applicant's qualifying residence and continuous physical presence. The earliest reliable document submitted by the applicant is his passport, issued in Washington, D.C., on June 11, 2003. The remaining documents submitted show presence after that date. The applicant claims to have entered the United States on May 15, 2000. It is reasonable to expect that he would have a variety of contemporaneous evidence to support the affidavits and tax returns submitted; however, no such evidence has been provided. The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.