



U.S. Citizenship
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FILE: [REDACTED]
[EAC 06 364 71799]

Office: VERMONT SERVICE CENTER

Date: JAN 30 2008

IN RE: Applicant:

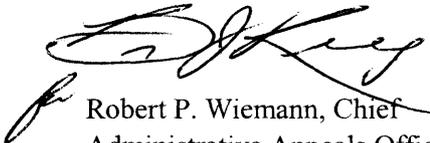


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The decision of the director will be withdrawn, and the application will be approved.

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 because the applicant failed to establish that he was eligible for late registration. The director also determined that the applicant failed to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, the applicant submits a letter and additional documentation.

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, 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 parole; 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.

Persons applying for TPS offered to El Salvadorans 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 Salvadorans was from March 9, 2001, through September 9, 2002.

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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, during the initial registration period, on June 17, 2002 (EAC 02 245 50932 relates). The director denied the application on August 22, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. An appeal from that decision, filed on September 23, 2003, was dismissed by the AAO on August 3, 2006.

The applicant also filed an application for re-registration for TPS on January 27, 2005 (EAC 05 138 74757 relates). That application was administratively closed by the VSC on April 20, 2007.

The applicant filed the current Form I-821 on September 1, 2006, and indicated that it was an initial TPS application. The director denied this application on May 23, 2007, because the applicant failed to establish his

eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The record reveals that the applicant has submitted the following documentation in support of his claim to TPS eligibility:

1. Photocopies of selected pages from two El Salvadoran passports (including the biographic pages) - one issued to him on June 25, 1999, in El Salvador, and the other issued to him on August 28, 2002, in Boston, Massachusetts. The first passport reveals that the applicant was issued a non-immigrant visitor's visa (B-1/B-2) at the U.S. consulate in El Salvador on June 29, 1999. Arrival and departure stamps contained in the pages provided reveal that the applicant was admitted to the United States on May 24, 2000, at Miami International Airport (MIA), Miami, Florida, as a non-immigrant visitor for pleasure (B-2) on May 24, 2000. There is a reentry stamp indicating that he returned to El Salvador on September 10, 2000, and again reentered the United States at MIA on February 2, 2001, as a non-immigrant visitor for business (B-1), with authorization to remain until March 1, 2001.
2. Several letters and affidavits from acquaintances, landlords, employers, and pastors attesting to their knowledge of the applicant.
3. A photocopy of a postcard mailed to the applicant in the United States, post-marked November 15, 2001.
4. A photocopy of a lease agreement, signed by the applicant, dated December 23, 2004.
5. Documentation dated on or after April 2006.

Based on a review of the record, it is concluded that the applicant filed an application for TPS during the initial registration period. He has also submitted sufficient evidence to establish his nationality and identity under the provisions of 8 C.F.R. § 244.9(a)(1), and that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS be withdrawn and the application will be approved.

An alien applying for Temporary Protected Status 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. Here, the applicant has met this burden.

ORDER: The appeal is sustained. The decision of the director dated May 23, 2007, is withdrawn, and the application is approved.