



**U.S. Citizenship
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Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 06 2008**

[EAC 07 165 70120]

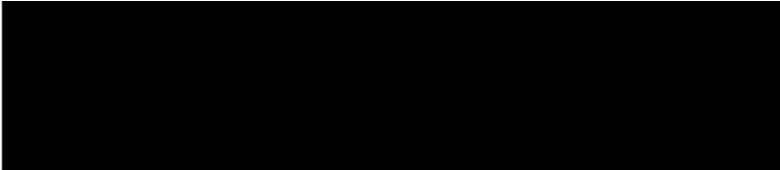
INRE:

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:



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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vennont Service Center (VSC), 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 and national 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 found that the applicant appeared to be eligible for late initial registration due to his asylum application, but denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. The director also found that the applicant had failed to provide evidence of his identity and nationality.

On appeal, counsel for the applicant asserts that the applicant has been continuously residing and continuously physically present in the United States since February/March 2001 and submits additional documentation in support of the claim.

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 (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. Subsequent extensions of the TPS designation have been granted, 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 an application for Asylum and Withholding of Deportation on January 31, 1996. On April 13, 2006, the New York Asylum Office found that the applicant failed to appear for a scheduled interview. The Asylum Office deemed the application abandoned, and denied and administratively closed the application.

On March 13, 2007, the applicant filed the current TPS application - more than four years after the end of the initial registration period for Salvadorans. In support of his application, the only document the applicant submitted was a copy of an interview notice from the Asylum Office, dated December 23, 2005.

On May 4, 2007, the director requested that the applicant submit evidence to establish his eligibility for late initial registration. The director also requested that the applicant submit evidence to establish his qualifying continuous residence and continuous physical presence. Finally, the director requested that the applicant submit an identity document bearing his photograph and/or fingerprint.

On July 17, 2007, the director determined that the applicant had failed to establish that he was a national of El Salvador, had failed to establish his eligibility for late initial registration, and, had failed to establish his qualifying continuous residence and continuous physical presence.

On appeal, counsel for the applicant asserts that the applicant has been continuously residing and continuously physically present in the United States since February/March 2001.

The record of proceeding contains the following documentation:

- The biographic page of the applicant's Salvadoran passport;
- His birth certificate, with translation;
- Employment Authorization Documents (EAD's) issued in 1996, 1997, 2003, 2004, and 2005, based on a pending asylum application;
- A New York State identification card, issued on February 28, 2006;
- A letter from _____ pastor at the Mission Assemblies of God Church;
- Four remittance receipts, dated December 3, 2001; April 15, 2002, September 20, 2003, and December 31, 2003;
- One remittance receipt issued on an unknown date;
- An affidavit from _____
- An affidavit from _____
- An affidavit from _____ and,
- Primary, credible evidence of continuous residence and continuous physical presence, including an invoice for medical services, a pay stub, dated March 5, 2004, and, a New York unemployment check, dated March 1, 2005.

Regarding the issue of identity and nationality, the applicant has submitted a photocopy of the biographic page of his Salvadoran passport. The applicant has overcome the director's decision to deny the application this ground. Accordingly, the director's decision to deny the application on this ground will be withdrawn.

Regarding the issue of late initial registration, the applicant was eligible for late-initial registration until the New York Asylum Office denied his asylum application. The applicant had an application for asylum pending and subject to further review during the initial TPS registration period. On December 23, 2005, the New York Asylum Office sent the applicant an interview notice. The applicant failed to appear for the scheduled interview. The AAO notes that the asylum application was denied and administratively closed pursuant to the ABC settlement agreement, and not referred to the Immigration Judge (11). After deeming the application abandoned and denying it, the Asylum Office issued the applicant a Notice to Appear before the 11, where the applicant would have an opportunity to submit a new asylum application, if he so chose. The applicant was considered an applicant for asylum until April 13, 2006, the date his asylum application was denied and administratively closed.

The application for TPS cannot be approved, however, because it was not filed within 60 days of the Asylum Office's denial of the asylum application. As previously discussed, the asylum application was deemed abandoned, denied, and administratively closed on April 13, 2006. The applicant did not file his TPS application until March 13, 2007 - about 365 days later. Even though the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file his TPS application within the 60-day period immediately following the denial of the asylum application, as required under 8 C.F.R. § 244.2(g).

Accordingly, the TPS application must be denied because it was not filed within the time frame prescribed in 8 C.F.R. § 244.2(g).

Furthermore, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence. The remittance receipts can be given little evidentiary weight. One of the receipts is not dated. The two receipts from 2003 list the applicant's address, but the receipt from 2001, only contains his name and not the applicant's address at the time. In addition, the receipts are not accompanied by evidence to corroborate the applicant's qualifying residence and continuous physical presence.

The letter from [REDACTED] can be given little evidentiary weight 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.

Diane Mena asserts that she has known the applicant since 1996 and that he helped her with repairs to her home in 2004 and 2005. She lists his current address. She does, not, however, list his address or refer to his residence or physical presence during the relevant dates in 2001 through 2002. In his affidavit, [REDACTED] lists the applicant's current address, asserts that the applicant is his father, and, states that he lived with the applicant in Newark, New Jersey in 1995 and 1996. He does not refer to the applicant's residence or physical presence during the relevant dates in 2001 through 2002. In her affidavit, [REDACTED] asserts that the applicant is her father, that he was living in the United States in 2000, and that he began living with her in March 2005, when he lost his job. She does not refer to the applicant's residence or physical presence during the relevant dates in 2001 through 2002.

The EAD's submitted by the applicant establish continuous residence and continuous physical presence from 1996 to 1997 and from 2003 to 2007. However, a large gap of time exists between 1997 and 2002, for which the applicant has not submitted sufficient credible evidence of his continuous residence and continuous physical presence. The applicant had a valid EAD beginning in 1996, when he first filed his asylum application. The evidence mentioned above from 1996 through 1997 and from 2003 through 2005 is primary, credible evidence of continuous residence and continuous physical presence. The applicant has not submitted similar evidence for the years 2001 or 2002. The applicant claims to have been continuously residing and continuously physically present in the United States since February/March 2001. It is reasonable to expect that he would have a variety of contemporaneous evidence to support the remittance receipts 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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.