

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

APR 20 2005

[SRC 03 235 54352]

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, Director
Administrative Appeals Office

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

The applicant, a minor child, is a native and 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.

On appeal, the applicant's mother submits a statement and additional evidence.

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 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 (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 25, 2003.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On October 3, 2003, 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 of his identity and nationality. The applicant, in response, provided photocopies of the following documentation in his name:

1. The biographic page of his El Salvadoran passport issued on October 14, 2003, by the Consulate General, Miami, Florida;
2. A school uniform certificate, with expiration date of December 31, 2001, signed by the principal, West Hollywood Elementary, Hollywood, Florida;
3. School certificates from West Hollywood Elementary, one dated November 15, 2001, and two dated November 26, 2001; and,
4. A report card, West Hollywood Elementary, Hollywood, Florida, dated September 25, 2001.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 13, 2004.

On the appeal form signed by the applicant's mother, she states that she would like to be given "the opportunity to be legal in this country in which with a lot of difficulty [she has] lived here without having the opportunity of being employed and also given the chance to pay [her] taxes." The statement further asks for the chance to have a better life and future for her family, and to prove that she has lived in the United States since 2000. In support of the appeal, the record contains photocopies of the following documentation:

5. Another copy of the biographic page of his El Salvadoran passport;
6. A Broward County Progress Report, Hollywood Elementary, Hollywood, Florida, for 2003-2004;
7. A letter dated October 9, 2003, from the Registrar, The School Board of Broward County, Florida, stating that the applicant entered West Hollywood Elementary on August 25, 2001, and resides with his mother in Hollywood, Florida;
8. A school certificate from West Hollywood Elementary dated November 19, 2003;
9. A Florida Certificate of Immunization, containing dates in 1994, 1995, 1996, 1998, and 2002; and,
10. Additional copies of Numbers 2, 3, and 4 listed above.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that either of his parents is an alien currently eligible to be a TPS registrant. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the record contains some inconsistent documentation that calls into question whether the applicant has credibly established his continuous residence in the United States since February 13, 2001, and his continuous

physical presence in the United States since March 9, 2001. The initial application included photocopies of the following documentation: an English "Translation of Birth Certificate," with no accompanying photocopy of the original on which the translation was based; a Statement of Parent(s)/Guardian(s), Proof of Arlington County Residency, Arlington Public Schools, Arlington, Virginia, dated October 9, 2000, signed by the applicant's mother, [REDACTED] attesting that the applicant, and another child, [REDACTED] resided in Arlington, Virginia, and attended Glebe School; and, two school certificates in the applicant's name from West Hollywood Elementary, dated May 6, 2000, and "6/3/2000."

There is no explanation regarding the attestation that the applicant lived and attended school in Arlington, Virginia as of October 2000, and the issuance of certificates from a school in Hollywood, Florida, during the same year. In addition, the school certificates for the year 2000 conflict with the letter from the Registrar, The School Board of Broward County, Florida, which indicates that the applicant did not enter West Hollywood Elementary until August 25, 2001.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The apparent inconsistencies undermine a finding that the applicant has established his qualifying continuous residence and continuous physical presence in the United States during the entirety of the requisite periods. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.