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U.S. Citizenship
and Immigration
Services

MI

FILE: [REDACTED]
[WAC 03 263 53865]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 05 2005**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The applicant 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 register in a timely manner."

On appeal, counsel 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 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 § 244.3;
- (e) Is not ineligible under § 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 September 12, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

The director determined that the applicant had "failed to register in a timely manner," and denied the application on April 7, 2004.

On appeal, counsel asserts that the applicant qualifies for late initial registration because he has had a pending asylum application since 1996. Counsel submits photocopies of Employment Authorization Cards valid from August 19, 1999 to August 19, 2000; August 19, 2000 to August 19, 2001; August 20, 2001 to August 20, 2002; and August 20, 2002 to August 20, 2003, respectively, indicating that the applicant has a pending asylum application.

The record indicates that the applicant's mother, [REDACTED] filed a Form I-589, Application for Asylum and for Withholding of Deportation, on May 22, 1995, as an ABC (*The American Baptist Church v. Thornburgh Settlement Agreement*) class member. The applicant, who was 16 years old as of that date, was included in his mother's application.

The record contains a CIS computer printout indicating that the applicant has been granted employment authorization as an alien who has a pending asylum application from August 19, 1996, through August 20, 2003. However, a separate CIS computer printout contained in the record indicates that the applicant was interviewed at the Los Angeles asylum office on June 15, 2002, and his derivative application for ABC class membership was "administratively closed - withdrawn" as of that date. It is not clear why the applicant continued to receive

extensions of his employment authorization as an asylum applicant under the ABC agreement through August 20, 2003, if his derivative application for asylum as an ABC class member was administratively closed on June 15, 2002, or if, in fact, the asylum application was actually closed. It is noted that the applicant was 21 years old as of August 17, 2000. The applicant stated in a letter dated September 10, 2003:

I would like to appl[y] for my TPS for the first time because I was included on my mother's asylum and since she applied for her permanent residen[ce] through NACARA. And I did not qualify because I was over twenty one when she had her interview.

The matter is remanded for a determination as to whether the applicant qualifies for late initial registration based on a pending asylum application as set forth at 8 C.F.R. § 24412(f)(2)(ii). If the director determines that the applicant qualifies for late initial registration on this basis, the director shall fully adjudicate the application and issue a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded for further consideration and action.