

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY



M 1

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 01 2005

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.

A handwritten signature in black ink, appearing to read "R. 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 appeal will be dismissed.

The applicant claims to be 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 had failed to establish that he was eligible for late registration.

On appeal, the applicant 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 alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 in the United States 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 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 shows that the applicant filed his initial application on July 28, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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 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).

In a Notice of Intent to Deny dated December 17, 2003, the applicant was requested to submit: (1) evidence establishing his eligibility for late registration; (2) evidence to show that he had continuously resided in the United States since February 13, 2001; (3) evidence to show that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application; and (4) documentation to establish his nationality and identity. The applicant, in response, provided evidence in an attempt to establish his residence and physical presence in the United States, and evidence of his nationality and identity.

The director determined that the applicant had failed to submit evidence to establish that he was eligible for late registration and denied the application on February 28, 2004.

On appeal, the applicant asserts that he filed his application on September 7, 2002, and paid the correct filing fee of \$220. In support of this claim, he submits a copy of a U.S. Postal Service Certified Mail Receipt dated September 7, 2002, and a copy of a personal check, in the amount of \$220, issued to "US Immigration Service"

by [REDACTED] on September 7, 2002, "for [REDACTED] Subsequent to the appeal, the applicant submits a copy of his appeal, another copy of with the same Certified Mail Receipt, and a copy of a cancelled personal check, in the amount of \$220, issued to "US Immigration Service" by [REDACTED] on September 7, 2002.

The evidence furnished by the applicant to establish that he had filed his TPS application does not appear credible. While the copy of the check from [REDACTED] shows the applicant's name on the check, it does not indicate that this check was for the applicant's TPS filing fee. Nor does this check show that it was received by the bank (Washington Mutual) for payment. Additionally, there is no evidence that the cancelled check from [REDACTED] was in fact the fee for the applicant's TPS application.

It is noted that the record contains a letter from the applicant, dated July 21, 2003, indicating that he and his wife filed their TPS applications since September 7, 2002, and because he never received information from CIS, he decided to refile his application. Attached to this letter is a copy of the check from [REDACTED]

The record of proceeding, however, contains no evidence to establish that the applicant filed his TPS application during the initial registration period, or that his application was received at the Service Center on or before September 9, 2002.

Accordingly, 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 TPS application on this ground will be affirmed, and the appeal will be dismissed

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.