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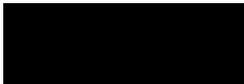
U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 29 2005

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IN RE:

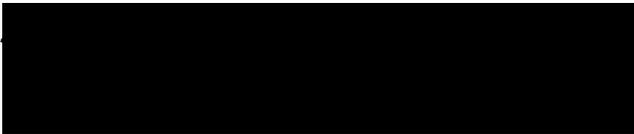
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 had failed to: (1) establish that he was eligible for late registration; (2) establish his qualifying continuous residence and continuous physical presence in the United States; and (3) provide evidence to establish his identity and nationality.

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 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 November 10, 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).

The director determined that the applicant had failed to: (1) establish that he was eligible for late registration; (2) establish his qualifying residence and physical presence in the United States; and (3) provide evidence to establish his identity and nationality. The director, therefore, denied the application on March 3, 2004.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. 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).

A review of the record of proceeding indicates that on August 17, 1988, the Immigration Judge (IJ) denied the applicant's application for asylum and withholding of deportation, and granted the applicant voluntary departure on or before March 17, 1989, with an alternate order of deportation to El Salvador. The applicant failed to depart as required. He also failed to appear at the Los Angeles district office on September 25, 1990, for his enforced departure. (File Number [REDACTED])

On July 7, 1995, the applicant filed another Form I-589, Request for Asylum in the United States, as an "ABC Class Member." On September 23, 1999, the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), Form I-881. On June 3, 2003, the applicant's NACARA application was denied because the applicant was subject to an outstanding final order of deportation or removal, and no evidence was furnished to show that his deportation or removal proceedings have been reopened.

The record in this case shows that applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) because he had applications for change of status, relief from removal, and asylum that were pending during the initial registration period from March 9, 2001, through September 9, 2002. The record further shows that, although the application for asylum (ABC class member) is pending, a decision was ultimately made on the applicant's NACARA application on June 3, 2003, and that the applicant filed his TPS application on November 10, 2003, within a 60-day period immediately following the expiration or termination of the qualifying condition as provided in 8 C.F.R. § 244.2(3)(g). Therefore, the applicant has overcome this finding of the director.

The second issue in this proceeding is whether the applicant has establish his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The applicant furnished with his TPS application a copy of his personal check in the amount of \$300 written to his attorney, and a copy of a receipt for payment of \$300, both dated September 17, 2001; a copy of his Employment Authorization Card valid from March 27, 2000 to March 26, 2001; and a copy of Form I-765, Application for Employment Authorization, signed on September 28, 2001.

The director determined that the applicant had failed to establish his qualifying residence and physical presence in the United States and denied the application.

On appeal, counsel asserts that the applicant was present in the United States during the required time, and that the applicant previously submitted evidence of his presence in the United States on prior occasions. He submits the following:

- (1) A copy of Form I-797C receipt notice for Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I-881, dated September 27, 1999.
- (2) Copies of Form W-2 Wage and Tax Statements for the years 2000, 2001, and 2002 for [REDACTED] (the applicant's spouse). Because this evidence does not pertain to the applicant, it will not be considered in this proceeding.
- (3) Copies of the applicant's Form W-2 Wage and Tax Statements for the years 2002 and 2003.
- (4) Copies of joint income tax returns, Form 1040, for the years 2000, 2001, 2002, and 2003.

The documents furnished with the application and on appeal, in conjunction with other documents included in the record of proceeding, is sufficient to establish that the applicant has met the residence and physical presence

requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has also overcome these findings of the director.

The final issue in this proceeding is whether the applicant has established his identity and nationality.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant furnished with his TPS application a copy of his El Salvadoran birth certificate with English translation. However, the birth certificate was not accompanied by photo identification. Therefore, the director determined that the applicant had failed to provide evidence to establish his identity and nationality, and denied the application.

On appeal, counsel asserts that a copy of the applicant's birth certificate and translation was included with the application. He resubmits copies of these documents.

The applicant, however, has failed to submit photo identification with his birth certificate. Nor did the applicant furnish a copy of his passport or any national identity document from El Salvador bearing his photo and/or fingerprint as required by 8 C.F.R. § 244.9(a)(1). Therefore, the director's decision to deny the application for this reason will be affirmed.

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.