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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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MAY 13 2005

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE:  
[SRC 03 039 55742]

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: 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.

*Cindy M. Gomez for*  
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 sustained and the application will be approved.

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 after determining that the applicant had failed to establish his eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence. It is noted that the appeal was received more than 30 days after the date of the director's decision. However, the applicant submitted the postmarked mailing envelope from the service center as evidence that he was submitting the appeal within 30 days of the mailing of the director's decision. Therefore, the appeal will be considered.

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 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.

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 14, 2002.

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).

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).

The director determined that the applicant had failed to establish he was eligible for late registration as set forth in 8 C.F.R. § 244.2(f)(2), and denied the application on January 26, 2004. It is noted that the director's decision incorrectly stated that the applicant's initial TPS application was filed on November 14, 2003, rather than that date in the year 2002. The director's decision also specifically noted that CIS records reflect that the applicant filed for asylum on September 19, 2002, ten days after the initial registration period had ended on September 9, 2002.

On appeal, the applicant states that he filed his annual application for TPS in September 2003, and that it was not a late initial registration. He confirms that he filed his application for asylum in the United States on September 19, 2002, and indicates that he was under immigration proceedings since 2001. In support of the appeal, the applicant submits photocopies of the following documentation: a mailing envelope from the Texas Service Center, bearing the applicant's name and address and postmarked March 1, 2004; receipt notices and money order receipts for the applicant's November 14, 2002, TPS application, and September 5, 2003, application to extend employment authorization; a Notice of Hearing in Removal Proceedings, Buffalo, New York, dated January 25, 2002, indicating that the applicant was scheduled for a hearing in the Immigration Court on March 14, 2002; and, a change of address card dated October 30, 2001, informing the Immigration Court of the applicant's move from Buffalo, New York, to Miami, Florida.

The applicant's assertion on appeal that his September 2003 application was "not a late initial registration" is correct in that it was not his first TPS application. The record of proceedings confirms that the applicant filed his initial TPS application on November 14, 2002, approximately two months after the initial registration period had closed on September 9, 2002. The record also confirms the director's notation that the applicant's asylum application, a factor in consideration of his eligibility for filing a late initial registration, was not filed until September 19, 2002.

The record contains the Notice to Appear, reflecting that the applicant was placed under immigration proceedings at Buffalo, New York, on October 24, 2001, as an alien who had been admitted to the United States, but was deportable, because he overstayed his visitor's visa. The record further establishes that the applicant's attorney, in a Supplement to Motion for Change of Venue, with a Certificate of Service dated February 14, 2002, indicated that she was requesting withholding of removal, along with other remedies, in the applicant's immigration proceedings. Therefore, during a portion of the initial registration period for El Salvadorans that ran from March 9, 2001, through September 9, 2002, the applicant fell under the provisions of 8 C.F.R. § 244.2(f)(2)(ii).

The Immigration Judge, Miami, Florida, on November 4, 2002, denied the applicant's claim for asylum and withholding of deportation, and granted the applicant voluntary departure. The applicant filed an appeal to the Board of Immigration Appeals (BIA). In a decision dated August 11, 2004, the BIA administratively closed the proceedings to allow the applicant to apply for TPS. In fact, the applicant had applied for TPS on

November 14, 2002, within ten days of the Immigration Judge's decision denying asylum and granting voluntary departure.

The applicant has submitted sufficient evidence to establish that he has met the requirements for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii) and (g).

Due to the circumstances of the case, a discussion is warranted regarding the criteria described in 8 C.F.R. § 244.2(b) and (c), regarding the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The record reflects that the applicant visited the United States on several occasions and last entered the United States as a B-2, nonimmigrant Visitor for Pleasure, at Miami, Florida, on September 17, 1998. The applicant received approval of his request to extend authorization of his stay until October 5, 1999. The applicant submitted: his State of Florida identification card issued on October 6, 1998, with a duplicate on September 28, 1999; his State of Florida Driver License issued on March 3, 1999, with a duplicate also on September 28, 1999; a Florida Vehicle Registration Certificate issued on December 6, 1999; a fee receipt from his attorney of record for consultation on February 7, 2001; a bus ticket receipt from Toronto, Ontario, Canada, to Niagara Falls, Ontario, Canada, dated April 6, 2001; his TACA International Airlines ticket from San Salvador, El Salvador, to Miami, Florida, on September 17, 1998; his El Salvadoran passport reflecting an entry stamp at Miami, Florida, on September 17, 1998, and reflecting previous visas and entries into the United States; his El Salvadoran cedula; his identification card from Universidad Catolica De Occident, El Salvador; and, a letter dated February 16, 1999, from [REDACTED] School of Religion, Miami, Florida, attesting to his activities at the church.

The record also contains documentation from the Canadian government to the Port Director, United States, indicating that on February 11, 2001, the applicant attempted to enter Canada from the United States. The document reflects that he was denied admission to Canada at the Rainbow Bridge, New York, port of entry, and notes that if an enforcement action were to result in a removal order from Canada, the applicant would be returned to the United States pursuant to Section 111.2C of the Reciprocal Arrangement. The applicant was subsequently paroled into Canada to pursue a refugee claim. The applicant attempted to return to the United States on April 6, 2001, but was refused entry and turned back to Canada. He was informed that he could only return to the United States if his refugee claim in Canada was denied.

A letter dated August 24, 2001, from the Embassy of the United States of America, Office of Immigration Attache, Ottawa, Ontario, Canada, to the Manager, Expulsion Division, Ontario South Enforcement, Niagara Falls, Ontario, Canada, verifies that: the applicant was refused admission into Canada; all avenues to appeal the decision of the Canadian government denying his refugee claim had been exhausted; the order of exclusion from Canada was final; and, that presentation of the letter to a United States Immigration Officer at a United States port of entry would authorize return of the applicant to the United States pursuant to Section III(2) of the Reciprocal Arrangement. The applicant was subsequently returned by Canadian authorities to the United States on October 24, 2001.

In the decision on the applicant's asylum case, the Immigration Judge, Miami, Florida, noted that when the applicant was returned from Canada on October 24, 2001, he was not admitted to the United States, and was not arriving from a foreign port or place, because he had never been admitted into Canada. The Immigration Judge refuted the attorney's contention that the applicant had affected a new entry to the United States in October 2001,

and found that the prior admission of September 17, 1998, would hold as the applicant's last date of entry into the United States.

For the reasons discussed above, the applicant will not be considered to have departed the United States and to have affected a new entry into the United States. Therefore, the totality of the evidence reflects that the applicant has met the requirements of continuous residence and continuous physical presence in the United States as required under the regulations at 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.

**ORDER:** The appeal is sustained.