



U.S. Citizenship  
and Immigration  
Services

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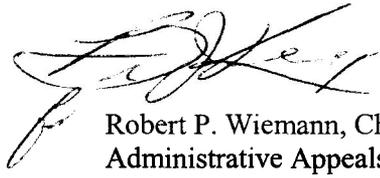
FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 11 2006  
[WAC 05 228 84360]

IN RE: [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, Chief  
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 establish that he was eligible for late registration.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 May 16, 2005.

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 February 5, 2006, 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 establishing nationality and identity, and evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, the applicant submits copies of his El Salvadoran birth certificate with English translation, his El Salvadoran passport, and his El Salvadoran identity card (Cedula). He also submitted evidence to establish continuous residence and continuous physical presence in the United States.

The director noted that the applicant's asylum application was denied on November 23, 1993, and his TPS application was filed on April 18, 2005,<sup>1</sup> more than 60 days after the expiration or termination of the qualifying

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<sup>1</sup> The record indicates that the initial TPS application was, in fact, filed with the California Service Center on May 16, 2005.

condition. The director, therefore, determined that the applicant had failed to establish eligibility for late registration and denied the application on April 14, 2006.

On appeal, counsel states that, while they concede that the applicant's asylum case was denied on November 23, 1993, his case, however, was referred to the Immigration Judge (IJ) on June 10, 1994, when the San Francisco Asylum Office served the applicant an Order to Show Case and Notice of Hearing, where the applicant is entitled to renew his claim for asylum. Citing 8.C.F.R. § 208.2(b), counsel asserts that "it is now under the exclusive jurisdiction of the IJ to review the applicant's claim for asylum. Therefore, since his asylum case was referred to the IJ it is deemed pending per further notification from the EOIR." Counsel asserts that the applicant has been waiting for his opportunity to renew his asylum claim before the IJ, and the responsibility in appointing the applicant a Master Hearing lies with Department of Justice, not the applicant; thus, it is not the applicant's fault that he has yet to be scheduled a hearing.

A review of the record of proceeding indicates that the applicant filed Form I-589, Request for Asylum in the United States, on June 23, 1992. A notice of intent to deny was issued on September 20, 1993, advising the applicant that he had not established either past persecution or a well-founded fear of future persecution, and therefore, intends to deny the asylum application and the application for withholding of deportation. The applicant was accorded 30 days from the date of the notice to submit a rebuttal or new evidence in support of his request for asylum. The applicant failed to respond. In a letter dated June 27, 1994, the San Francisco Asylum Office advised the applicant that his application for asylum and his application for withholding of deportation are denied as of November 23, 1993, since he had not established a clear probability of persecution. The applicant was placed in deportation [removal] proceedings and Form I-221, Order to Show Cause and Notice of Hearing, was issued on June 10, 1994. The applicant was advised that he may renew his request for asylum before an Immigration Judge in [deportation] proceedings.

Counsel's assertion that the applicant's asylum case is pending as of June 10, 1994, when his case was referred to the IJ, is without merit. As noted above, the application for asylum and application for withholding of deportation were denied on November 23, 1993, and he was placed in removal proceeding; thus, Form I-221 was issued. The fact that the Form I-221 was issued is not evidence that the applicant's asylum application remains pending before the IJ. The applicant was advised that he "may renew your request for asylum before an Immigration Judge in these [deportation] proceedings." There is no evidence in the record that the applicant has reapplied for asylum, or that the request for asylum was, in fact, renewed before the IJ.

The applicant has failed 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.

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.