



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 23 2007
[WAC 05 243 73166]

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.


for 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 record reveals that the applicant filed an initial TPS application on September 24, 2003, after the initial registration period had closed, under Citizenship and Immigration Services (CIS) receipt number WAC 04 005 51616. The director denied that application on February 25, 2004, because the applicant had failed to "register in a timely manner." The applicant appealed the director's decision to the AAO on March 24, 2004. The AAO affirmed the director's decision and dismissed the appeal on August 24, 2004, after noting that the applicant filed his initial TPS application on September 24, 2003, more than a year after the expiration of the initial registration period, and the applicant had not submitted any evidence to establish that he had met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The AAO also noted that the evidence submitted by the applicant was insufficient to establish 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.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 31, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on July 5, 2006.

The applicant, in this case, was not filing a re-registration application but, rather, he was filing his first or initial application; therefore, this decision of the director will be withdrawn, and a decision will be made based on late initial application.

On appeal, the applicant states that he received the director's denial decision dated July 5, 2006, after the time required to file his appeal, and that if he had received the notice at an earlier date, he would have responded on time. The applicant further states that he had made a change of address prior to the director's notice of decision. The record of proceeding contains the applicant's request for change of address received at the California Service Center (CSC) on June 9, 2006, prior to the director's denial decision. The applicant submits a copy of an envelope from the CSC, addressed to the applicant at his former address, postmarked July 6, 2006, that was returned to the CSC as undeliverable; and a copy of another envelope from the CSC addressed to the applicant at his new address, postmarked July 28, 2006. It is noted that although the director's denial decision was mailed to the applicant's new address on July 28, 2006, the original date of the director's decision (July 5, 2006) was not changed to accord the applicant sufficient time to respond to the director's decision (within the required 33 days of the decision). Accordingly, the filing of the applicant's appeal on August 30, 2006, is not considered late.

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 application on May 31, 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).

The applicant, in this case, 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 application for temporary protected status will be affirmed.

Additionally, the applicant has not overcome the AAO's findings that the applicant has submitted insufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.