



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **APR 23 2007**
[WAC 05 221 72986]

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 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.

The term *brief, casual, and innocent absence* as used 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 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 9, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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 May 9, 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 to establish his nationality and identity. In response, the applicant furnished a copy of his birth certificate with English translation and a copy of an El Salvadoran passport issued to the applicant on May 31, 2005, in Los Angeles, California. The director determined that the evidence furnished by the applicant in response to the NOID was insufficient to establish eligibility for late registration, and denied the application on August 4, 2006.

On appeal, the applicant resubmits his birth certificate and passport, noted above, and a copy of a B1/B2 nonimmigrant visa, affixed to his passport, that was issued in El Salvador on December 9, 1998, with an expiration date of December 8, 2008. The passport contains entry stamps made upon his entries into the United States at Los Angeles, California.

The applicant's passport and the records of Citizenship and Immigration Services (CIS) reveal the following:

Arrived in the United States (US) on January 24, 2000; departed from the US on July 10, 2000
Arrived in the US on July 25, 2000; departed from the US on December 15, 2000
Arrived in the US on June 20, 2001; departed from the US on December 13, 2001
Arrived in the US on May 26, 2002

As stipulated in 8 C.F.R. § 244.2, a late initial registrant must demonstrate that during the initial registration period from March 9, 2001, through September 9, 2002, he or she has met at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). The applicant indicated, in a statement furnished with his response to the director's NOID, that he filed a late registration because he was not aware that "even though I entered with a visa I was eligible to apply for TPS." As noted above, the applicant made several entries and departures from the United States using a nonimmigrant visitor's visa.

Regulations at 8 C.F.R. § 244.2(g) require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. 244.2(f)(2). The applicant, in this case, had a 60-day period immediately following the expiration of his grant of stay in the United States (generally six months from the date of admission for B1/B2 nonimmigrant visitors); however, the record indicates that the applicant departed from the United States prior to the expirations of his nonimmigrant status. The applicant was last admitted to the United States as a B1/B2 nonimmigrant visitor on May 26, 2002, during the initial registration period for El Salvadorans. His grant of stay in the United States as a nonimmigrant expired on November 25, 2002. The applicant's 60-day period in which to file his TPS application under the late initial registration expired on January 24, 2003. The applicant filed his TPS application on May 9, 2005, more than two years after the required 60-day period for filing a late registration.

Accordingly, 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 TPS application will be affirmed.

Additionally, as stipulated in section 244(c), above, the Attorney General designated the dates required to establish continuous residence as of February 13, 2001, and continuous physical presence since March 9, 2001. The record indicates that the applicant was not present in the United States during this period. As noted above, the applicant departed from the United States on December 15, 2000, and reentered the United States more than six months later, on June 20, 2001. Therefore, the applicant could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical

presence since March 9, 2001, described in 8 C.F.R. § 244.2(b) and (c). Furthermore, it cannot be held that the applicant's more than six-month absence was brief, casual, and innocent. It appears that the applicant was not residing in the United States but, rather, was a temporary visitor to the United States and subsequently returns to his home country after his visits. Therefore, the application will also be denied for these reasons.

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.