



U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 06 306 74112]

OFFICE: Vermont Service Center

DATE: **AUG 17 2007**

IN RE: Applicant:

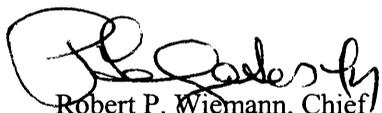


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 on the grounds that the applicant did not respond to a request for evidence and therefore failed to establish that he was eligible for late TPS registration, that he was continuously resident in the United States since February 13, 2001, and that he was continuously physically present in the United States since March 9, 2001, and also failed to furnish any photo identity document and court records of his criminal history.

On appeal the applicant asserts that he has been living in the United States since 1990, has never been convicted of a crime, and that he is eligible for late TPS registration based on a pending application for political asylum.

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.

- (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 conditions described in paragraph (f)(2) of this section.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 Form I-821, Application for Temporary Protected Status, on July 19, 2006 – nearly four years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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). *See* 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. *See* 8 C.F.R. § 244.9(b).

On December 7, 2006, the VSC issued a Notice of Intent to Deny (NOID) in which it requested the applicant, who claims to have entered the United States without inspection on July 18, 1990, to submit evidence that he was eligible for late registration and met the continuous residence and physical presence requirements for TPS applicants from El Salvador, as well as a photo identity document and the final court dispositions of five arrests in and around Los Angeles, California, between 1994 and 2002, including whether he was convicted of any felonies or misdemeanors. The applicant failed to respond within the 33-day period indicated in the NOID.

On February 27, 2007, therefore, the director denied the application on the grounds that the applicant failed to establish that he was eligible for late TPS registration, failed to establish that he was continuously resident and continuously physically present in the United States since the applicable dates for El Salvadoran nationals, and failed to submit a photo identity document and court records documenting the final disposition of his arrests.

On appeal the applicant states that he has been living in the United States continuously since 1990. The applicant asserts that he has never been convicted of two misdemeanors, or any other crimes, and that no court records exist because the charges were dropped and he was never formally charged. The applicant also contends that he is eligible for late TPS registration on the basis of a pending Form I-589 application for asylum. The applicant submits photocopies of his current California identification card issued by the Department of Motor Vehicles, an expired Employment Authorization card issued in the 1990s, and an appointment notice (Form I-797) issued to the applicant on April 14, 2006, by the Application Support Center in Los Angeles, California, in reference to his TPS application.

The factual assertions and documentation submitted on appeal do not establish the applicant's eligibility for TPS. While the applicant may have been living in the United States since 1990, as he claims, the evidence submitted on appeal, and elsewhere in the record, is insufficient to establish that he has been continuously physically present in the United States since March 9, 2001, and a continuous resident in the country since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Though the applicant contends that he was never formally charged with or convicted of any crime, no records have been submitted from the courts in the Greater Los Angeles area that would have jurisdiction of such cases confirming that the applicant has not been convicted of any of the criminal offenses cited in the Federal Bureau of Investigation (FBI)'s arrest report. Thus, the applicant has failed to establish that he has not been convicted of a felony or two or more misdemeanors committed in the United States, which would make him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.1. As for the applicant's asylum application, Form I-589, CIS records show that it was filed on November 20, 1990, and denied by the Director of Asylum in Los Angeles, California, on May 19, 1993. No appeal was filed. Accordingly, the applicant did not have an asylum application pending, or subject to appeal or further review, during the initial registration period in 2001-2002 for TPS applicants from El Salvador, as required for the applicant to be eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). Nor does the record show that the applicant is eligible for late TPS registration under the other qualifying criteria enumerated at 8 C.F.R. § 244.2(f)(2)(i), (iii), and (iv). In accord with the director's decision, therefore, the denial of the application on the foregoing grounds will be affirmed.

The application for TPS will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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 that burden.

ORDER: The appeal is dismissed.