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U.S. Citizenship
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AUG 20 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

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IN RE:

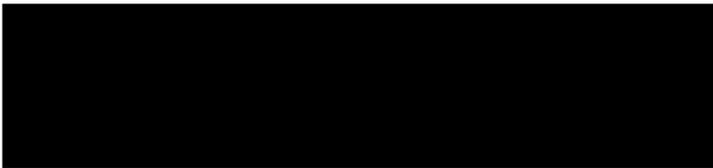
Applicant:



APPLICATION:

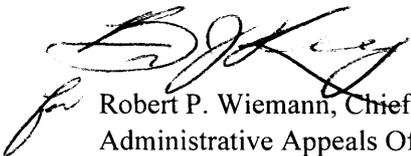
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application during the initial registration period on July 25, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 02 251 50719. The Director, Vermont Service Center, denied that application for abandonment on June 6, 2003, because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 10, 2005, and indicated that he was filing a late initial application for TPS.

The director denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the director negligently denied the application after an excessive waiting time.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, it is noted that the director's decision does not address the fact that the applicant filed a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current application with CIS on May 10, 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 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).

On appeal, counsel for the applicant states that the director negligently denied the application after an unreasonably excessive waiting time. According to counsel, the applicant filed the present application as a late initial registration and not as a re-registration application. Counsel correctly points out that the applicant filed a late initial registration and not a re-registration. Counsel also contends that the applicant is the minor child of a TPS-eligible alien and is therefore eligible for TPS.

As evidence to establish his continuous residence and continuous physical presence in the United States during the requisite period, the applicant submitted the following

1. Statements from [REDACTED] the applicant's father, [REDACTED], and [REDACTED]
2. A copy of the applicant's birth certificate, with English translation, a copy of his passport, Social Security card, and copies of previously issued employment authorization cards.
3. Copies of envelopes from Great Neck Public Schools, date-stamped June 22, 2001, August 12, 2003, October 16, 2003, August 5, 2004, and an envelope with an illegibly date-stamped envelope.

4. A statement from [REDACTED] indicating that the applicant received required school vaccinations on May 2, 2002, June 14, 2002, and July 1, 2003.

The applicant's father states that the applicant entered the United States on March 16, 2000. According to Mr. [REDACTED], the applicant was initially reluctant to attend the Great Neck South Middle School, and his regular attendance at the Great Neck North High School began in November 2001. [REDACTED] also states that the applicant entered the United States on March 16, 2000, and lived with him for a couple of months. [REDACTED] statement is not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Furthermore, in the file of the applicant's father [REDACTED] he submitted a TPS application on April 27, 2001 in which he indicated that the applicant was in El Salvador. In fact, the applicant's father does not indicate that the applicant is in the United States until his May 17, 2005 TPS re-registration application. An unsigned letter from [REDACTED] PTA President, Great Neck South Middle School, dated June 3, 2001, was sent to the applicant's parents on June 3, 2001 informing them that there was a meeting scheduled on June 13, 2001. However, this letter contradicts the statement from [REDACTED] in which he claims that the applicant did not begin attending school until November 2001. The applicant, on the other hand, indicates on his TPS application that he entered the United States on March 16, 2000. These discrepancies have not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The passport and birth certificate establish the applicant's nationality and identity. Of the remaining evidence, one of the envelopes indicates a date of June 22, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States during the requisite period. Therefore, this evidence is of little or no probative value.

While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. In order to establish eligibility for late initial registration, the child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). The applicant has not met these requirements.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.