



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

AUG 24 2007

[EAC 06 357 83467]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is applying for 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 failed to establish he was eligible for late initial registration.

On appeal, counsel states:

The Immigration Service erred and abused its discretion in denying Respondent's application for TPS. Respondent clearly established that he is a minor child and as such he qualifies for derivative TPS status under Subsection (v) of Section 244 of the Immigration and Nationality Act. The Respondent in this case filed clear and convincing evidence of his qualification for TPS status and Immigration Service Erred and abused its discretion in denying TPS for the Respondent.

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

Persons applying for TPS offered to El Salvadorans 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 application with Citizenship and Immigration Services on September 22, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On December 21, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant did not respond.

On appeal, counsel asserts the applicant is eligible for late registration because he qualifies for derivative TPS status. However, to establish this claim of eligibility for late registration, the applicant must provide evidence that he is a child of an alien currently eligible to be a TPS registrant, and if he is claiming eligibility through his father, that a legal relationship between his parents existed when he was born. He has not done so. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988). Moreover, the applicant was 23 when he finally applied in 2006. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration. 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

While regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow the children of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. To establish his claim for continuous residence and continuous physical presence, the applicant submitted copies of five rent receipts dated February 1, 2002, February 1, 2002, February 1, 2003, February 1, 2004, and February 1, 2005. After review of the evidence submitted, it is determined that the applicant has not provided any evidence to establish his continuous residence and continuous physical presence during the required time period. 8 C.F.R. § 244.2 (b) and (c). Therefore, the director's decision to deny the application for TPS is affirmed for these additional reasons.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore, the application shall not be approved for this additional 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 cited 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.