



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **DEC 27 2007**

[EAC 07 003 77149]

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.

John H. Vaughan
for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 failed to establish his personal identity and El Salvadoran nationality, his eligibility for TPS late registration, and his qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant submits some documentation in an attempt to establish his claim of eligibility for TPS.

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 TPS 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.

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.

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. 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 by the Secretary of the Department of Homeland Security, with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his first application for TPS on April 6, 2001, at the Texas Service Center (TSC) under receipt number SRC 01 169 55803. That application was denied by the TSC director on October 3, 2003, due to abandonment because the applicant failed to appear for his scheduled fingerprint appointment.

The applicant filed the current application with Citizenship and Immigration Services (CIS) on September 4, 2006, 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 satisfied 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).

The current application was denied by the VSC director on January 22, 2007. The director determined that the applicant did not establish that his El Salvadoran nationality, his eligibility for TPS late registration, or his qualifying continuous residence and continuous physical presence in the United States, and failed to provide a photocopy of his identity document.

On appeal, the applicant states that he qualifies for TPS because he is married to an eligible TPS registrant. The applicant also asserts that he has resided in the United States since before February 13, 2001. In addition, the applicant provides copies of the following documentation: the biographical page of his El Salvadoran passport with photo identification; the Employment Authorization Document (EAD) and Texas State Identification Card of his spouse, [REDACTED] (aka [REDACTED]; an approval notice regarding his spouse's TPS; his marriage license indicating that he married [REDACTED] at Irving, Texas, on August 29, 2006; a Fingerprint Notice from the TSC dated May 1, 2002; and three receipt notices from the TSC dated May 10, 2001, and November 27, 2002.

The first issue in this proceeding is whether the applicant has established that he is a national or citizen of El Salvador. On appeal, the applicant provides a copy of his El Salvadoran passport which establishes that he is a national of El Salvador. Therefore, the director's decision to deny the application on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant has established his eligibility for TPS late registration.

The applicant states on appeal that he qualifies for TPS because he is married to an eligible TPS registrant. The applicant also provides a copy of his marriage certificate. However, the applicant did not marry [REDACTED] until August 29, 2006. In order to qualify for TPS late registration, the applicant's marriage must have occurred during or before the initial registration period for El Salvadoran nationals, which closed on September 9, 2002.

Though [REDACTED] is an eligible TPS registrant, the qualifying marriage must have occurred after the initial registration period. Thus, the applicant is not eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv). Nor does the applicant meet any other criteria for late registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The third issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The documentation provided by the applicant post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not established that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application on these grounds will also be affirmed.

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 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 this burden.

ORDER: The appeal is dismissed.