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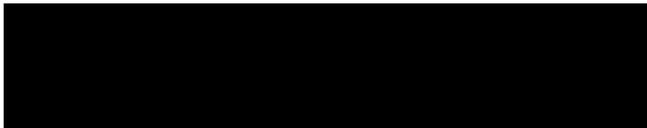
FILE: [REDACTED] Office: California Service Center
[WAC 05 139 74687 – as it relates to
SRC 04 066 54611]

Date: **JUL 27 2007**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center (TSC). A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO; and, the appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application under receipt number SRC 04 066 54611, on January 5, 2004, after the initial registration period had closed. On August 24, 2004, and on November 30, 2004, the TSC director requested the applicant to submit evidence to establish his eligibility for TPS late registration as well as his qualifying continuous residence and continuous physical presence in the United States. The TSC director determined that the record did not contain a response to the November 30, 2004, request and denied that application on January 5, 2005, due to abandonment.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 16, 2005, and indicated that he was re-registering for TPS. The director denied this re-registration application on November 16, 2006, 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 asserts the applicant's claim of eligibility for TPS, and submits some evidence in attempt to support that claim.

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. Subsequent extensions of the TPS designation have been granted with the latest extension until September 9, 2007, 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 reveals that the applicant filed his initial application, SRC 04 066 54611, with Citizenship and Immigration Services (CIS), on January 5, 2004.

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).

A review of the record of proceedings reflects that the TSC director erred in stating that the record did not contain a response to her November 30, 2004, request. The applicant responded to the TSC director's request on January 4, 2005, prior to the issuance of the decision to deny the application due to abandonment on January 5, 2005. The applicant submitted the following in response to the director's request: copies of two hand-written receipts dated February 17, 2001 and March 7, 2001; a copy of a Teller's Check from Bank of America dated May 31, 2001; and two copies of receipts dated June 1, 2001 and December 3, 2001.

On appeal, counsel states that the applicant did file an application for TPS during the initial registration period, and that the applicant re-applied during the subsequent registration periods. Furthermore, counsel states that the applicant had timely responded to the Notices of Intent to Deny dated August 24, 2004 and November 30, 2004.

On appeal, the applicant, through counsel, states that he entered the United States in 1994 and that he applied for TPS during the initial registration period. The applicant also provides copies of the following: Notices of Intent to Deny dated August 24, 2004, and November 30, 2004; his Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the year 2000; his Certificate of Title issued on October 28, 1999; an Express Mail receipt dated September 8, 2004; two United States Postal Service Return Receipt cards dated January 5, 2004, and January 4, 2005; his Employment Authorization Document valid from March 9, 2005 to September 9, 2006; several earnings statements from Swat-Nit, Incorporated, dated from May 28, 1998 to November 21, 2002; and previously submitted receipts dated March 7, 2001, June 1, 2001, May 31, 2001, and December 3, 2001.

A review of the record of proceedings does not reflect that the applicant had applied for TPS during the initial registration period. In fact, the applicant had indicated on his application, SRC 04 066 54611, filed on January 5, 2004, that it was his initial TPS application; therefore, that application is considered his initial TPS application; and therefore, he must establish his eligibility under TPS late registration provisions.

Although the applicant has provided evidence to establish his qualifying continuous residence and continuous physical presence in the United States, a review of the record of proceedings reflects that the applicant has not submitted any evidence 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 application for TPS will be affirmed.

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.