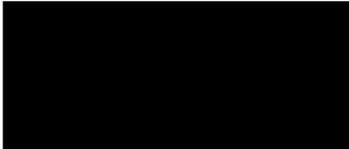




U.S. Citizenship
and Immigration
Services

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MS

FILE:



OFFICE: California Service Center

DATE: MAR 09 2007

[WAC 05 210 73050]

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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the applicant failed to establish that he (1) had maintained continuous physical presence and residence in the United States since the dates applicable for TPS applicants from El Salvador, and (2) is eligible for late registration under 8 C.F.R. § 244.2.

On appeal the applicant asserts that he filed on time for TPS, has been in the United States since 2004, and lives with his parents who are permanent residents.

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.

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 applicant filed his initial Form I-821, Application for Temporary Protected Status, on April 28, 2005. On that form the applicant stated that he was born on June 13, 1988, and that he entered the United States on November 25, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 February 23, 2006, the service center requested the applicant to submit evidence that he met the requirements for late registration, as well as evidence of his date of entry into the United States, 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 submitted by the applicant failed to demonstrate that he met the requirements for TPS. Accordingly, the director denied the application on April 19, 2006.

On appeal the applicant reiterates his contention that he filed a timely application for TPS, confirms that he has been in the United States since the fall of 2004, and states that he is living with his parents. The applicant asserts that he is eligible for TPS because he was a minor when he entered the United States and his parents, according to the applicant, are permanent residents.

The record does not establish that the applicant, who did not file during the initial registration period for TPS applicants from El Salvador, is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). On appeal the applicant submitted photocopies of his mothers' Employment Authorization Card, valid from August 24, 2005 to September 9, 2006, and his father's Permanent Resident Card, valid until January 15, 2012. CIS records do not show that either of the applicant's parents – [REDACTED] – or [REDACTED] – are aliens currently eligible to be TPS registrants, as required for the applicant to be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv).

The applicant's claim of derivative eligibility for TPS is without merit. Although children of aliens currently eligible to be TPS registrants may qualify for late registration, they must meet the same continuous residence and continuous physical presence requirements as their parents. Thus, if a minor child of El Salvadoran parents was not a continuous resident of the United States since February 13, 2001 and continuously physically present in the country since March 9, 2001, he or she is ineligible for TPS regardless of the parents' eligibility.

Moreover, since the applicant did not enter the United States until November 2004, he was not continuously physically present in the United States since March 9, 2001, nor a continuous resident of the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).

The AAO concludes that the applicant has failed to overcome the grounds of denial cited by the director. The record confirms that the applicant filed his TPS application after the initial registration period had expired, and the evidence of record does not establish that he met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Furthermore, as the record indicates that the applicant entered the United States without inspection on or about November 25, 2004, which was after the requisite time periods for qualifying continuous physical presence and continuous residence under 8 C.F.R. § 244.2(b) and (c), the applicant is statutorily ineligible for TPS.

The director's denial of the application for TPS will therefore be affirmed, with each of the reasons discussed above considered an equal 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.