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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 05 196 73360 -  
as it relates to  
EAC 01 170 52346]

OFFICE: Vermont Service Center

DATE: MAY 08 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:

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, Vermont Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The case 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 application was denied by the director on July 26, 2006, on the ground that the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant states that he filed his initial TPS application during the initial registration period for El Salvadoran nationals, that he has been married to a TPS registrant since January 2004, and that he has been in the United States continuously since he entered the country in September 1997. The applicant resubmits copies of materials already in the record and requests that his case be reconsidered.

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.
- (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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the criteria enumerated 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).

The record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status [EAC 01 170 52346], on April 5, 2001. On November 19, 2002, after the applicant failed to respond to a request for evidence issued in September 2001, the director denied the application on the ground of abandonment in accordance with the regulation at 8 C.F.R. § 103.2(b)(13). The applicant filed a motion to reopen on January 6, 2003, which was dismissed by the director on March 12, 2003, on the ground that it was not filed within the 33-day period specified in the regulations at 8 C.F.R. § 103.5(a) and 8 C.F.R. § 105a(b).

The current TPS application was filed by the applicant on April 14, 2005. On May 2, 2006, the director sent the applicant a request for evidence that he was eligible for late registration and that he has been continuously resident and continuously physically present in the United States since the applicable dates for TPS applicants from El Salvador. The applicant submitted various documentation in response to the request.

On July 26, 2006, the director denied the application, finding that it was received after the initial registration period for TPS, which ended on September 9, 2002, and that the applicant had failed to establish that he was eligible for late TPS registration through his wife because they were not married until January 13, 2004. Under the late filing criterion of 8 C.F.R. § 244.2(f)(2)(iv), the applicant would have to have married his wife no later than September 9, 2002 – the closing date of the initial registration period – to qualify for late registration.

On appeal, the applicant asserts that his application should not have been denied for late filing because he filed his first TPS application during the initial registration period for El Salvadoran nationals and because he has had a common law marriage with his wife since 1994, long before they were formally married in 2004. The applicant also asserts that he came to the United States on November 10, 1997, and has never left the country since then, thereby satisfying the continuous residence and continuous physical presence requirements for TPS.

The AAO does not agree with the applicant's assertion that his current application meets the requirements for late registration. In order to qualify for late registration under the provisions of 8 C.F.R. § 244.2(f)(2), the applicant must be married to a TPS registrant during the initial registration period. The applicant was not married to a TPS registrant, [REDACTED], until January 13, 2004, which was nearly a year and a half after the initial registration period had expired. Though the applicant claims that he had a common law marriage with his wife dating back to 1994, it was not until the wedding in 2004 that she became a "spouse" within the meaning of 8 C.F.R. § 244.2(f)(2)(iv). Furthermore, the record confirms that the applicant filed the current Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, the second Form I-821 cannot be considered as an application for annual re-registration. The current application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside the initial registration period. In this case, the applicant has not satisfied any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Accordingly, the decision to deny the application for Temporary Protected Status on that ground 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 that burden.

**ORDER:** The appeal is dismissed.