



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



M

FILE: [REDACTED]
[EAC 03 076 53665]

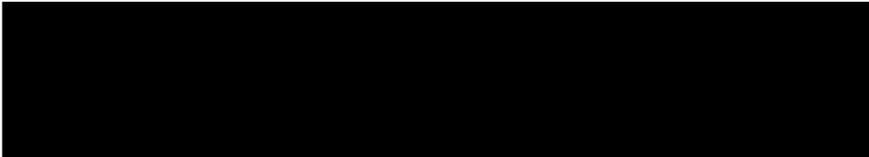
Office: VERMONT SERVICE CENTER

Date: MAY 11 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 office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for
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 (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 that he was eligible for late registration.

On appeal, counsel for the applicant submits a brief and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence 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. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on October 23, 2002.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On October 6, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, counsel for the applicant submitted a letter stating that the applicant had a Form I-485, Application to Register Permanent Residence or Adjust Status, pending during the initial registration period and, therefore, qualifies for late registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii).

The director determined that the applicant's Form I-485 had been rejected on May 15, 2003, and, therefore, CIS could not consider the Form I-485 as pending during the initial registration period. The director denied the applicant's Form I-821 on March 24, 2004.

On appeal, counsel again asserts that the applicant had a Form I-485 pending during the initial registration period and, therefore, qualifies for late registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii).

A review of the record reflects the following:

- On August 30, 1994, the applicant was admitted to the United States as a nonimmigrant visitor for pleasure (B-2), with authorization to remain until March 1, 1995.
- On September 19, 1994, the applicant filed a Form I-589, Request for Asylum in the United States. Because the applicant's testimony in connection with that application was deemed not credible, the applicant was referred for a hearing before an Immigration Judge on October 4, 1995.

- On January 27, 1997, the applicant's Form I-589 was withdrawn before the Immigration Judge. The Immigration judge granted the applicant voluntary departure until January 27, 1998, with an alternate order of deportation to El Salvador if he failed to depart the United States by that date. The applicant failed to depart as ordered. **At the time of the immigration judge's order, the applicant was advised that he was ineligible for adjustment of status as provided for in section 245 of the Act.**
- On August 11, 1999, the applicant was divorced from his first spouse, [REDACTED]. On October 18, 1999, he married his second spouse, [REDACTED], a citizen of the United States. On February 13, 2001, the applicant's second spouse filed a Form I-130, Petition for Alien Relative, on the applicant's behalf. The applicant simultaneously filed an application to adjust status on Form I-485.
- On October 23, 2002, the applicant filed the current Form I-821. He also filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.
- On May 15, 2003, the Form I-130 was denied as a matter of law. The applicant's Form I-485 was rejected because CIS did not have the authority to consider the application. The applicant was advised that because he had not complied with the Immigration judge's order of January 27, 1997, he must file a motion to reopen the deportation proceedings and make his application before an Immigration Judge.
- On May 15, 2003, a Warrant of Removal/Deportation was issued ordering the applicant's removal/deportation from the United States. And, on May 17, 2003, a Warning to Alien Ordered Removed or Deported, was issued to the applicant.
- On October 29, 2003, action on the Form I-130 filed on the applicant's behalf by his second spouse was automatically terminated pursuant to Operating Instructions 102.2(o).
- On October 14, 2004, the applicant, through counsel, submitted a request for a Bona Fide Marriage Exemption in accordance with 8 C.F.R. § 245.1(c)(9)(iii)(F).

There are discrepancies noted in the information provided concerning the applicant's last claimed date of entry into the United States. The record includes evidence of the applicant's entry into the United States as a nonimmigrant visitor for pleasure (B-2) on August 30, 1994. At the time of filing the Forms I-130 and I-485 in February 2001, the information provided also indicated that the applicant's last entry into the United States was in August 1994. There is no evidence contained in the record that the applicant ever departed and subsequently reentered the United States; however, at the time of filing his TPS application in October 2002, the applicant claimed to have last entered the United States on August 11, 1999. These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Based on a review of the record and applicable law and regulation, it is concluded that the applicant has failed to establish his eligibility for late registration. As indicated above, the Immigration Judge advised the applicant in 1997 that he was ineligible for adjustment of status. CIS had no authority to consider any such application; and,

in fact, the application was rejected. Therefore, CIS cannot consider the application for adjustment of status as a pending application during the initial registration period. Consequently, the director's decision will be affirmed.

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the requirements numerated 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.