



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 02 2007

[EAC 02 033 53549 and
EAC 04 021 52650]

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:



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 Director, Vermont Service Center (VSC), denied the initial application. The director denied a subsequent application for re-registration. That application is currently before the Administrative Appeals Office, (AAO), on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the case will be remanded for further consideration and action.

The applicant is a citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the initial application because the applicant failed to appear for fingerprinting and the second application because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel for the applicant reasserts the applicant's eligibility for TPS and submits previously submitted documentation.

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 as designated by the Attorney General is eligible for temporary protected status 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 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 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 March 9, 2009, 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 she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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). 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 record reflects that the applicant filed a TPS application, under receipt number EAC 02 033 53549, on September 28, 2001, during the initial registration period for Salvadorans. The director denied the initial application on November 25, 2002, due to abandonment for failure to appear for fingerprinting. The fingerprint notice was sent to the address listed on the TPS application. The denial letter was returned to the director as not deliverable as addressed.

The applicant filed the current TPS application on October 20, 2003 (EAC 04 021 52650). The director denied the application on July 26, 2004. The applicant appealed and the AAO remanded the case for issuance of a decision setting forth specific reasons for the denial. On May 4, 2006, the director denied the application. The director indicated that a request for evidence had been sent to the applicant for proof of eligibility for late registration and for qualifying continuous residence and continuance physical presence. The director also indicated that the application had been considered abandoned on July 26, 2004. The director further indicated that the applicant had 33 days to appeal the decision. On appeal, counsel for the applicant reasserts the applicant's eligibility for TPS and submits previously submitted documentation.

The record contains the following documents submitted by the applicant:

- a photocopy of the biographical page of his Salvadoran passport;

- a photocopy of his Form I-94, Arrival/Departure Record, showing his entry into the United States as a B-2 nonimmigrant visitor for pleasure on May 31, 2000;
- a 2002 Internal Revenue Service (IRS) Form 1040EZ, Individual Tax Return;
- a 2002 Form 1, Massachusetts Resident Income Tax Return;
- a letter from [REDACTED] and [REDACTED] owners of the International House of Pancakes, 528 South Broadway St., Salem, NH 03079, dated June 15, 2001, attesting that the applicant had worked at the restaurant since June 3, 2000;
- a letter from [REDACTED], owner of the International House of Pancakes, 528 South Broadway St., Salem, NH 03079, dated April 16, 2004, attesting that the applicant worked at the restaurant since June 3, 2000;
- a letter from [REDACTED] a former co-worker of the applicant's;
- a letter from [REDACTED] the applicant's hairdresser;
- a sworn affidavit from Dominga Cedre, dated January 26, 2003, attesting that she had rented a room to the applicant in her home since July 2002;
- a letter from the International Institute of Greater Lawrence, Inc., dated April 25, 2001, indicating that the applicant had taken a basic computer course there from November 6, 2000, to March 8, 2001; and,
- a letter from the applicant, dated November 11, 2002, addressed to the director, inquiring about the status of his application.

The AAO notes that, although the second TPS application was not filed during the initial registration period, the first application was. If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). The applicant has satisfied the requirements for establishing his continuous residence and continuance physical presence and his identity and nationality. Before the applicant can be approved for TPS, however, the record must include a fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI). As previously discussed, the applicant missed his fingerprinting appointment in conjunction with the initial TPS application in 2001. Until such fingerprint investigation has been conducted, TPS cannot be approved.

Accordingly, the case will be remanded to the director to secure an FBI fingerprint report on the applicant, and, thereafter, to issue new decisions on the applicant's initial and current TPS applications.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration is also withdrawn as it is dependent upon the adjudication of the initial application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted that the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.