



U.S. Citizenship  
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Services

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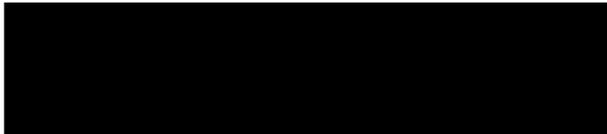
OFFICE: VERMONT SERVICE CENTER

DATE: OCT 02 2007

[EAC 07 033 51054]

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 application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 VSC director denied the application on April 16, 2007, because the applicant failed to establish he was eligible for late registration. The director also found that the applicant failed to establish he had continuously resided in the United States and had been continuously physically present in the United States during the periods required by the regulations. The applicant filed his current appeal from that decision on May 18, 2007.

On appeal, counsel submits a brief and additional documents.

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 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.

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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on November 16, 2006.

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).

On February 27, 2007, 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). The applicant submitted a response on April 2, 2007, through his counsel who argued that the applicant was not aware that his asylum application had been denied on July 11, 2005, because his representative did not inform him of this fact.

The VSC director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 16, 2007. On appeal, counsel argues that the 60-day period permitted to file a late TPS registration should be tolled until August 21, 2006, when the applicant discovered that his asylum application had been denied and that it was due to ineffective assistance of counsel, based on a non-attorney posing as one.

However, CIS is not responsible for the inaction on the part of an applicant and/or individuals she or he chooses to rely upon to process her or his TPS application. Furthermore, there is no evidence contained in the record to show that [REDACTED] submitted a Form G-28, Notice of Entry of Appearance of Attorney or Representative, indicating that he would be representing the applicant. All correspondence was sent by CIS to the applicant at his address, and not to [REDACTED]. There is no evidence contained in the record that [REDACTED] was anyone other than the preparer of the applicant's asylum application. Counsel's statements and additional evidence submitted on appeal have been carefully considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements for late registration stated above.

The applicant has not submitted sufficient evidence that he meets the requirements for late registration as enumerated 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.