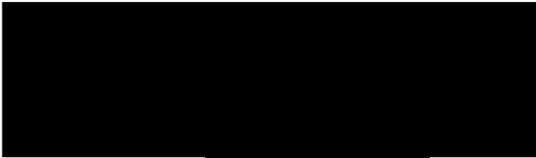




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



MI

FILE: [REDACTED]
[WAC 05 221 91748]

Office: California Service Center

Date: SEP 04 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 record reveals that the applicant filed a late initial TPS application on May 9, 2005, under CIS receipt number WAC 05 221 91748. The director denied the application on May 15, 2006, because the applicant failed to establish that he was eligible for late initial registration for TPS.

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 May 9, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she 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).

With his TPS application, the applicant submitted:-

- An El Salvador birth certificate with an English translation;
- An Employment Authorization Card, dated October 17, 2003;
- A California Identification Card;
- An employment reference letter, dated February 22, 2005;
- A certificate of Live Birth, dated A [REDACTED]; and,
- Various receipts and invoices, including money transfer receipts.

On appeal, the applicant states that he is eligible for TPS because he arrived in the United States in 1990, and he has submitted the requested evidence. The applicant states further that he submitted a late TPS application because during the initial registration period he received Employment Authorization under Section (C)(8), as a dependent on his mother's asylum application. With his appeal, in an attempt to establish his continuous residence and continuous physical presence in the United States, the applicant submits additional documents, including a 2000 tax return, various Wage and Tax Statement, and some of the same evidence earlier submitted.

In order for the applicant to be eligible for late TPS registration, as a former asylum applicant, he should have submitted his TPS application, no later than 60 days immediately following termination of his asylum application pursuant to the regulations 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). As noted above, on appeal, the applicant asserts that he is eligible for late registration because he was a dependent on his mother's asylum application. Service regulations may allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period; however, section 101(b)(1) of the Act defines the term "child" as

an "unmarried person under twenty-one years of age." Evidence of record reveals that the applicant (who was born on December 19, 1977), was 21 years old on December 19, 1998. The applicant was not considered a "child" during the registration period, as the applicant turned 21 years old on December 19, 1998. Also, at the time the applicant filed his TPS application, on May 9, 2005, the applicant was 27 years old, and therefore, cannot be considered a "child" for immigration purposes. There is no evidence of record to indicate that the applicant filed a separate asylum application. Therefore, the applicant is ineligible to file a late initial application for TPS.

In addition, the applicant continued to receive EADs, inadvertently, and until his last EAD was denied on October 16, 2004. The applicant filed his initial TPS application on May 9, 2005, over seven months after his last Employment Authorization Application, Form I-765, expired.

The evidence submitted does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. Therefore, the applicant does not meet the regulatory requirements for late initial registration.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with his subsequent TPS re-registration application, reflects that the applicant was arrested on June 6, 2006, by the Sheriff's Office, San Bernardino, California, and charged with:- Count 1: one count of "DUI ALCOHOL/DRUGS W/PRIORS"; and, Count 2: one count of DUI ALCOHOL/0.08 W/PRS." The final court disposition is not in the record of proceeding. CIS must address this arrest, and any convictions, in any future proceedings.

An alien applying for temporary protected status 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.