

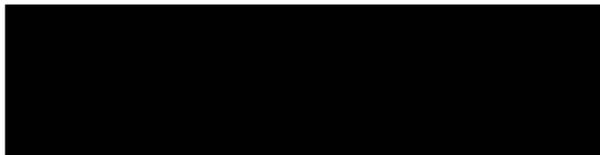
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U.S. Department of Homeland Security
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Washington, DC 20529

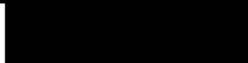


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:



Office: Vermont Service Center

Date: **APR 02 2008**

[EAC 06 336 82545]

INRE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 on appeal. The appeal will be dismissed.

The applicant claims 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 director denied the application because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant asserts that filing an application for TPS during the initial period qualifies an individual to file a late initial application.

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 (t)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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.

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). 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record indicates that the applicant's prior TPS application was denied. The applicant filed this subsequent application with Citizenship and Immigration Services (CIS) on September 1, 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(t)(2) above.

The director, noting a previous application had been denied, determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 12, 2007.

On appeal, counsel asserts the applicant is eligible to file a late registration application.

Counsel asserts that the applicant is eligible for late registration because his previous TPS application constituted "an application pending for relief from removal" during the initial registration period. The regulations at 8 C.F.R. § 244.2(f)(2) were promulgated to allow persons who had not filed during the initial registration period to file a late initial application if they met the conditions listed. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the interim benefits of Temporary Protected Status do not equate "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation.

Counsel's interpretation also goes against public policy because taking it to its logical extreme, an alien whose initial application had been denied could file a new application within 60 days after the denial, and perpetuate the application process indefinitely; thus enjoying the interim benefits of Temporary Protected Status without ever actually satisfying the conditions necessary to receive TPS. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications or who had been denied to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Applying the statutory canon of "plain meaning" in this case establishes that TPS is not a form of relief contemplated by the regulation at 8 C.F.R. § 244.2(f)(2) because it is not listed. Counsel incorrectly invokes the finding in *Chevron*, which holds that in the event of any ambiguity deference must be given to an agency's reasonable interpretation. In this case there is no ambiguity but the case is still relevant because it supports CIS' authority to exercise informed discretion. *Chevron U.S.A., Inc., v. NRDC*, 467 U.S. 837 (1984)(concluding that agencies are more familiar with the sophisticated nature and relationships of the statutes they administer, and that deferring to agencies promotes uniformity in the law).

In summary, the meaning of the regulation is clear; using counsel's interpretation is bad public policy because it would allow an exploit to be "read into" the regulation; there is no legal authority or legislative history supporting counsel's interpretation; CIS' decision is based on the record and its reasonable interpretation is firmly founded in legislative history and will be given deference. *Id.* Counsel's assertions have no legal merit.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does address the applicant's failure to establish eligibility late 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 12, 2007. In addition, the director noted that a prior application had been denied on the same basis.

On appeal, the applicant reasserts his claim and re-submits documentation already in the record.

The evidence in the record includes tax returns, pay stubs, affidavits and prior filings of the applicant, which generally tend to corroborate the applicant's presence from August, 2002. However, there is a substantial gap in evidence covering a period prior to this time. Evidence which is relevant to this period in question includes:

1. Letter, dated August 3, 2002, from [REDACTED] asserting he has known the applicant since November 2000.
2. Letter, dated July 28, 2002, from Reverend [REDACTED] asserting the applicant has been a member of his church since November 20, 2000.
3. Letter from [REDACTED] asserting he witnessed the applicant attending church every Sunday for five years.
4. Gigante Express Money Order Receipt, dated February 4, 2001.

The affidavit from **Reverend_I** has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

The money order documents submitted by the applicant provide little weight to his assertions of eligibility, as they contain no independently verifiable information and the AAO cannot make a determination as to their authenticity. As an example, it does not appear this money order receipt was processed, and therefore it cannot be determined that the documentation is contemporaneous with the date listed therein.

The letters submitted by the applicant are too general to be probative of the applicant's continuous residence or physical presence in the United States, one simply asserting that he has "known the applicant since November 2000." While 8 C.F.R. § 244.9(a)(2)(vi) states that "other relevant documents" such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant's qualifying residence or physical presence in the United States. CIS processes thousands of TPS applications, and is familiar with the type of evidence which can be presented by qualified applicants. An agency may make reasonable empirical assumptions based on its experience and history of its regulatory management its field. *NLRB v. Curtin Matheson Scientific, Inc.*, U.S. 775 (1990). The unavailability of evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2).

The applicant claims to have lived in the United States since October 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Any future TPS applications filed by this applicant must articulate a legitimate basis of eligibility to file a late initial registration or be rejected for failing to articulate prima facie eligibility. 8 C.F.R. § 244.1.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.