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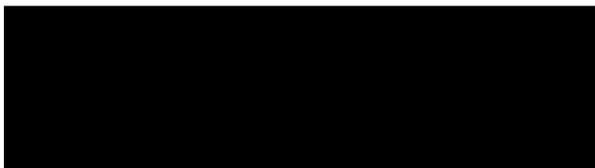
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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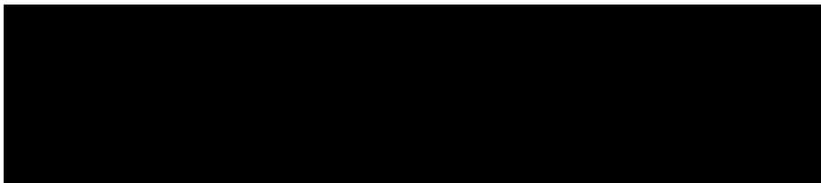
IN RE:

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, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 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 asserts that neither counsel nor the applicant received a request to provide additional documentation. Counsel further asserts that the applicant has been in the United States since September 1990, and that his absence from the United States in February 2001 was brief, casual and innocent and was with the permission of the immigration service.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite 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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with CIS on February 14, 2007. 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.

On April 2, 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 was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. Although the record reflects that the request was mailed to the applicant in care of counsel, counsel stated that neither she nor the applicant received the request.

The record reflects that the applicant filed a Form I-589, Request for Asylum in the United States, on September 9, 1994. The director noted that the applicant had filed an asylum application and appeared to

have met the requirements of 8 C.F.R. § 244.2(f)(2)(ii). However, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 15, 2007.

On appeal, the applicant submitted a copy of a November 13, 2006 Referral Notice from the Director, Houston Asylum Office, notifying the applicant that CIS was referring his request for asylum to an immigration judge for adjudication in removal proceedings. The letter specifically informed the applicant that his asylum application had not been denied. Accordingly, the applicant qualifies for late registration pursuant to 8 C.F.R. § 244.2(f)(2)(ii). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be withdrawn.

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.

As stated above, the applicant was requested on May 15, 2007 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, accordingly to counsel, did not receive this request.

On appeal, the applicant submits documentation including the following:

1. A copy of a January 21, 2005 Social Security Earnings Statement, showing earnings reported for the applicant from 1993 through 2003.
2. Copies of the applicant's monthly mortgage statements for April and May 2001, and a transaction history for 2001, showing payments throughout the year.
3. Copies of check stubs for the applicant issued by [REDACTED] dated in January and April 2001, and August 2002.
4. Copies of Forms 1099-MISC, Miscellaneous Income, issued to the applicant in 2001 through 2006, and a copy of a Form W-2, Wage and Tax Statement, for the year 2006.
5. A copy of a September 1, 2002 waste management bill for the applicant.
6. A copy of an "employee list" from [REDACTED] for 2003. The document shows the applicant was hired on November 1, 2001, and shows wages for January through August 2003.
7. A copy of an "employee list" from [REDACTED], for the applicant for the period January 1, 2006 to November 7, 2006. The document indicates that the applicant was hired on November 9, 2004, and shows wages for February through October 2006, and a "1099 Report" for the applicant for the period January through March 2006.

The applicant also submits copies of federal tax returns for the years 2003 through 2006. However, the forms contain no confirmation that they were ever filed with the Internal Revenue Service, and therefore are not contemporaneous evidence of the applicant's residence and physical presence in the United States during the qualifying periods.

However, the evidence submitted by the applicant sufficiently establishes his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. Accordingly, the director's decision will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.