

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M,

FILE:

[EAC 07 018 71729]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 15 2008

IN RE:

Applicant:

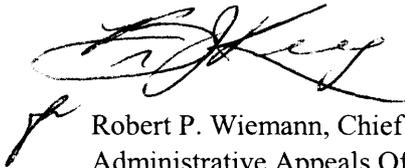
APPLICATION:

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 Vermont Service Office. 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 The director's decision will be withdrawn and the appeal will be sustained.

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.

On appeal, counsel asserts that, as the Board of Immigration Appeals has not issued a final order on his pending asylum application, the applicant is eligible for late registration.

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

The record reflects that the applicant filed a Form I-821, Application for Temporary Protected Status, on July 1, 2002 (LIN 02 232 50883). The Director, Nebraska Service Center, denied this application on January 21, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not appeal the director's denial of his application.

The applicant filed a Form I-821 application for re-registration on July 28, 2003 (LIN 03 233 50047). If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant. As the applicant's initial TPS application had been denied, the director considered the application as an initial registration, and by letter dated August 21, 2003, requested that the applicant submit evidence that he was eligible for late registration and evidence to establish his continuous residency and physical presence. The applicant did not respond to this request, and the director denied the application on October 16, 2003.

The applicant filed the application that is the subject of this appeal on October 16, 2006. In an October 11, 2006 statement accompanying the application, counsel asserted that the applicant's application for asylum "is not subject to a final EOIR order and thus is pending. Therefore, the application is submitted within 60 days from any potential expiration or termination of the qualifying condition."

The record contains a copy of a Form I-589, Request for Asylum in the United States, filed by the applicant on August 2, 1994. On November 15, 1994, the Director, Los Angeles Asylum Office of the legacy Immigration and Naturalization Service (INS, now CIS), acting for the Acting Assistant Commissioner for Refugees, Asylum and Parole, notified the applicant of her intent to deny his asylum request because he had not "demonstrated that it is more likely than not that [his] life or freedom would be threatened on account of one of the five [qualifying] grounds." The applicant was advised that he had 30 days in which to rebut or submit additional evidence, and that failure to do so could result in the denial of his asylum request. The applicant failed to respond to the Notice of Intent to Deny, and the director subsequently denied his asylum request on December 30, 1994. The denial letter informed the applicant that he could renew his asylum request before an immigration judge. The letter notifying the applicant of this denial and placing him in deportation proceedings with the issuance of an Order to Show Cause and a Notice of Hearing, was returned by the U.S. Postal Service as undeliverable on September 5, 1995.

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 continuous physical presence in the United States from February 13, 2001, to the date of filing. The applicant, in response, provided evidence in an attempt to establish his qualifying residence and physical presence in the United States. The applicant also submitted a copy of an I-94 Departure Record, indicating that he had been paroled into the United States until December 11, 1996, pursuant to a pending asylum application.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 23, 2007. On appeal, counsel asserts that in denying the application:

[T]he Service appears to argue Applicant could have taken his asylum case to an Immigration Judge. However, this is incorrect. Only the Government has the discretion whether to file or not to file a charging document with the Immigration Judge and thus initiate proceedings. Here, the Government elected not to place Applicant in proceedings. The non-existence of a case before the EOIR can be verified by calling the Immigration Court Information Line.

The record establishes, however, that the legacy INS placed the applicant in deportation proceedings in July 1995. That the Immigration Court Information Line does not currently reflect a pending proceeding is not evidence that efforts were not undertaken by the legacy INS to initiate such proceedings.

Nonetheless, the provision of 8 C.F.R. § 208.14(c) permits denial of a request for asylum by an asylum officer only if the applicant is in a valid status or with valid parole at the time of his or her asylum application. The applicant indicated in his asylum request that he entered the United States without inspection. Further, the record does not indicate that the applicant was present in the United States with valid parole. Therefore, he was not in a valid immigration status at the time of his asylum request. Pursuant to 8 C.F.R. § 208.14(c), the asylum officer was required to refer the applicant's asylum request to an immigration judge for adjudication in removal proceedings.

The record reflects that although the asylum office initiated deportation proceedings, it did not successfully pursue them to the immigration court. Accordingly, there has been no final disposition of the applicant's asylum request and it is still pending a final review. Therefore, the applicant has submitted sufficient information to establish that he qualifies for late registration. Consequently, the director's decision to deny the application for TPS will be withdrawn and the appeal sustained.

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 met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.