

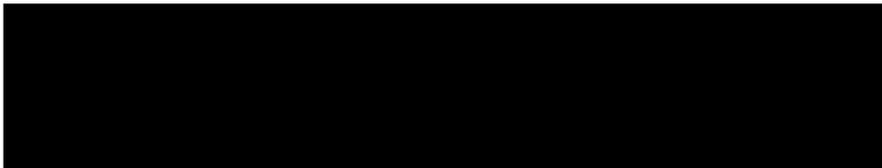
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FILE:



[EAC 06 325 74462]

Office: Vermont Service Center

Date: **FEB 25 2008**

IN RE:

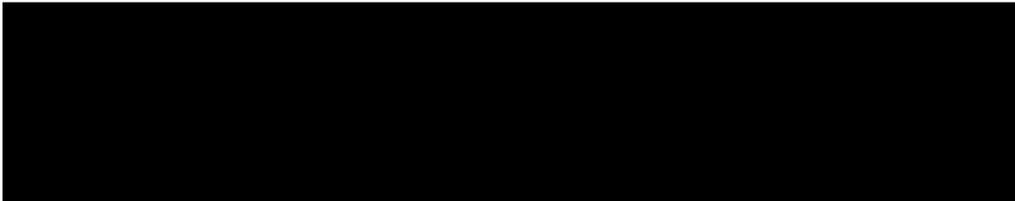
Applicant:



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 Center. Any further inquiry must be made to that office.

Robert P. Wienmann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, Vermont Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. The appeal will be sustained and the applications will be approved.

The applicant is 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 July 16, 2004, under CIS receipt number WAC 04 210 51374. The Director, California Service Center, denied the application on October 14, 2004, because the applicant failed to establish that he was eligible for late initial registration for TPS. A subsequent late appeal was rejected by the Director, California Service Center, on January 4, 2005, as improperly filed because it was filed untimely.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on May 16, 2005, under CIS receipt number WAC 05 228 81243, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal was dismissed, on December 22, 2006, after the Chief of the AAO also concluded that the applicant had failed to establish eligibility for late initial registration.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on August 21, 2006, under CIS receipt number EAC 06 325 74462, and indicated that he was filing an initial TPS application. The Director, Vermont Service Center, denied that application on May 8, 2007, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS, and the applicant failed to establish eligibility for late initial 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on August 21, 2006.

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).

On appeal, counsel asserts that the applicant is eligible for late initial registration as he was a dependent on his father's asylum application. Counsel states that the applicant submitted a late TPS application within 60 days of May 21, 2004, when the applicant was notified that his Employment Authorization under Section (C)(8), as a dependent on his father's asylum application, had been denied because only then did the applicant become aware

that his father's asylum application had been dismissed. With the appeal, in an attempt to establish the applicant's eligibility for TPS, counsel submits photocopies of:

1. A Social Security statement, dated June 26, 2006, indicating earnings for the applicant from 1997 through 2005, inclusive;
2. An unclear identification card from Van Nuys Community Adult School;
3. An unclear Change of Information Form;
4. A California Driver License that expires October 28, 2002;
5. A letter from the International Brotherhood of Electrical Workers Local Union No. 11, dated September 8, 1999, notifying the applicant of a scheduled apprenticeship examination;
6. A financing statement notifying the applicant of a payment on September 19, 2000;
7. Two payroll checks, one dated September 7, 2001, and one unclear;
8. A certificate of Completion, dated January 25, 2001;
9. Three Employment Authorization Cards, 1 unclear, and 2 issued in 2000, and 2002, respectively, indicating issuance under category C(08);
10. A Private Investigations course completion certificate, issued in September 2003; and,
11. Three invoices, one dated in 2005, and two dated in 2006.

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 father's asylum application, and the applicant submitted his initial TPS application within 60 days after he was first notified that he no longer had a pending asylum application. Evidence of record reveals that the applicant (who was born on October 27, 1977), was 21 years old on October 27, 1998. However, the applicant continued to receive EADs, issued under category C(08) until his last EAD was denied on May 21, 2004. The applicant filed his initial TPS application, on July 16, 2004, within 60 days after he became aware that he no longer had a pending asylum application. The applicant is eligible to file a late initial application for TPS on the basis of his prior asylum application.

The evidence submitted in this case mitigates the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. Therefore, the applicant has met the regulatory requirements for late initial registration.

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS; the record of proceedings reveals that an FBI fingerprint check conducted in connection with the re-registration application shows no derogatory information. The record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and ample evidence of his continuous physical presence in the United States from March 9, 2001, to the date of filing his initial application. The record of proceedings contains a photo ID with his fingerprints. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.