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



U.S. Citizenship
and Immigration
Services

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FILE:



[LIN 04 200 51940]

OFFICE: NEBRASKA SERVICE CENTER

DATE:

JAN 29 2008

IN RE:

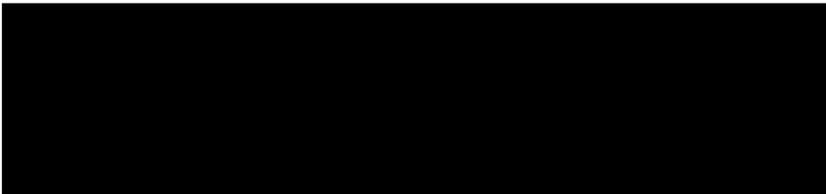
Applicant:



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 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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.

On appeal, counsel asserts that the applicant's TPS was "denied solely through the ineffective assistance of a paralegal who is not licensed or authorized to practice law."

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 an application for TPS with Citizenship and Immigration Services (CIS) on April 17, 2001 [LIN 01 169 50651]. The application was denied for abandonment on November 16, 2001.¹ The applicant filed a motion to reconsider on February 4, 2002, alleging that he did not receive the director's request for evidence and the denial notice because he had changed his phone number. The director dismissed the motion as untimely filed.

The applicant filed the application that is the subject of this appeal on June 28, 2004. The director denied the application on October 28, 2004, because the applicant failed to establish that he qualified for late registration. As counsel notes on appeal, the applicant notified the service center of his change of address on October 25, 2004. However, the decision denying the application was mailed to the applicant's old address. The service center subsequently corrected this error and on November 16, 2004, mailed the denial notice to the applicant at his correct address. However, the director determined that the applicant's December 6, 2004, appeal of this denial was untimely filed, and considered the appeal as a motion to reopen. On January 19, 2005, the director affirmed the previous denial of the application. This procedural irregularity is not prejudicial to the applicant's claim, as the AAO will consider all evidence of record.

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).

On September 9, 2004, 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. The applicant, in response, provided evidence in an attempt to establish his qualifying residence and physical presence in the United States.

¹ The director later reissued the decision on August 5, 2002. The record does not reveal, however, why the decision was reissued.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application. On appeal, counsel asserts that because the applicant did not receive effective assistance from a paralegal who held himself out as an immigration consultant, the applicant's initial application on April 17, 2001, was denied for abandonment.

The applicant alleges that he did not receive the director's request for evidence issued on July 10, 2001, in connection with his initial TPS application, and that the immigration consultant failed to respond to the request. The applicant further states that upon learning that his initial application had been denied, he filed a motion to reopen with the assistance of the immigration consultant. The motion was denied as untimely filed. Although the applicant states that he did not receive a copy of the request for evidence or the denial notice, both were sent to the address he identified on his Form I-821, Application for Temporary Protected Status.

Additionally, while the applicant's Form I-821 application indicates that it was prepared by someone other than the applicant, nothing in the record indicated that the applicant was represented by an immigration consultant or other unauthorized or authorized representative. The regulation at 8 C.F.R. § 103.2(a)(3) specifies that an applicant may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The regulations do not permit "Immigration Consultants" to appear as representatives before CIS, and they are not recognized as authorized representatives for immigration purposes. Therefore, whether or not the applicant received effective assistance from an immigration consultant is immaterial in this proceeding.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for TPS during the registration period designated under section 244(b) of the Act." The applicant filed a Form I-821 on April 17, 2001. However, the application was denied due to abandonment and a subsequent motion to reopen was dismissed as untimely filed. The applicant did not file an appeal of the dismissal of the motion. Therefore, the applicant did not "register" during the initial registration period and any subsequent application must be considered as a late registration.

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to properly file his Application for Temporary Protected Status within the initial registration period. 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 TPS will be affirmed.

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.