

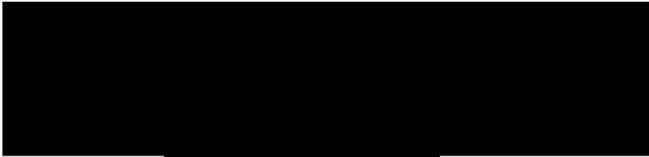


**U.S. Citizenship
and Immigration
Services**

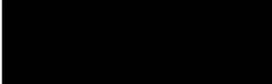
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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 11 2008**

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INRE:

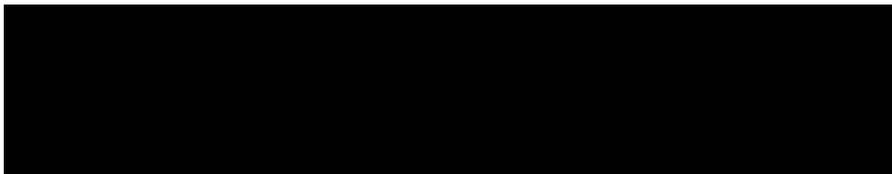
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section
244 of the Immigration and Nationality Act (the 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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 his eligibility for late initial TPS registration.

On appeal, the applicant asserts that he is eligible for late initial registration under 244.2(f)(ii), as he had an asylum application pending during the initial registration period for TPS. The applicant submits a final court disposition for a criminal arrest in 2004.

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.

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 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 under the current designation for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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 four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed a defensive asylum application before the Immigration Judge (IJ) in Los Angeles, California. On March 31, 1989, the IJ denied the application. The applicant appealed to the Board of Immigration Appeals (BIA). On July 19, 1990, the BIA summarily dismissed the appeal, because the applicant failed to specify whether he was challenging erroneous findings of fact or law in the IJ's decision.

The applicant was subsequently granted TPS during a previous designation for Salvadorans that expired on June 20, 1992.¹ The applicant was also granted Deferred Enforced Departure (DED), a related form of

¹ The applicant became a registered class member of the American Baptist Churches (ABC) class action lawsuit when he applied for TPS under the previous designation for El Salvador. The ABC settlement agreement gave Salvadorans who had previously been denied asylum the right to an initial or *de novo* review of their asylum claims, if they asked for it, in writing, before the agreed upon date of February 16, 1996, or within 90 days from the issuance of notice of this right under the ABC settlement agreement. Under the terms of the ABC settlement agreement, the INS (now USCIS) sent Notice 5 to all Salvadorans

temporary relief from removal granted to Salvadoran TPS registrants, on November 6, 1992, and again, on September 17, 1993. That designation of DED expired on December 31, 1994. These earlier TPS and DED programs are unrelated to the March 9, 2001, TPS designation for El Salvador.

On April 12, 2000, the IJ denied the applicant's Motion to Reopen (MTR) his case under 8 C.F.R. § 3.43(c)(1) to apply for suspension of deportation under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). The regulation allowed individuals initially to file the motion without attaching the NACARA application and supporting documents. As long as the MTR was filed by Sept. 11, 1998, individuals had until Feb. 8, 1999, to complete the MTR by filing the completed suspension application and supporting documents. The MTR would not be adjudicated until the application was also filed. The IJ denied the MTR, finding that the applicant timely filed the first part of his MTR, but failed to complete the motion by the required date. The applicant appealed the IJ's denial of his MTR to the BIA. On December 27, 2000, the BIA dismissed the appeal.

The applicant filed his initial TPS application under the current designation for El Salvador on September 13, 2006 - almost four years after the close of the initial registration period under the current designation. The director accepted the application under the late filing provisions of 8 C.F.R. § 244.2(f)(2). The applicant submitted no documentation in support of his application. On December 11, 2006, the director requested that the applicant submit evidence that he qualified for late registration. The director also requested that the applicant submit evidence to establish his continuous residence and continuous physical presence. In addition, the director requested that the applicant submit proof of his identity and nationality. Finally the director requested that the applicant submit the final court disposition of an arrest for DUI that occurred on May 21, 2004.

In response, the applicant asserted that he was in valid, nonimmigrant status at the time of the initial TPS registration period, but submitted no evidence to support this assertion. Instead, the applicant submitted photocopies of his birth certificate, with translation; his California driver's license; and, various credible documents relating to his continuous residence and continuous physical presence.

On April 30, 2007, the director found that the applicant had established his identity, nationality, and qualifying continuous residence and continuous physical presence, but denied the application, because the applicant was not in valid non-immigrant status and had not been granted voluntary departure or any other relief from removal during the initial registration period and did not qualify for late initial registration. The director noted that the BIA had dismissed the applicant's appeal on December 27, 2000.

On appeal, the applicant asserts that he had an asylum application pending during the initial registration period for TPS and submits a final court disposition for a criminal arrest in 2004.

The BIA rendered a final decision on the only asylum application filed by the applicant on July 19, 1990. The applicant had an opportunity to have his asylum claim heard again under the provisions of the ABC settlement agreement, but failed to properly assert his right to do so. Therefore, the alien did not have an asylum application pending during the initial registration period under the current TPS designation for El Salvador. 8 C.F.R. 244.2(f)(2)(ii). In fact, the applicant's asylum application had not been pending for over 15 years when he

who registered for ABC benefits by filing for TPS. Notice 5 informed Salvadorans who applied for TPS of the deadline for filing their ABC asylum applications. If a Salvadoran who applied for TPS establishes that he or she was not properly sent Notice 5 back in 1995, then that person has 90 days from the date Notice 5 is properly issued to file an asylum application under the terms of the ABC settlement agreement. The applicant did not assert his right to a *de novo* review of his asylum claim, although it is unclear from the record of proceeding whether he was sent Notice 5.

applied for TPS in 2006. The applicant had another opportunity to apply for relief from removal under NACARA but failed to file a completed MTR under the regulations. The BIA rendered a final decision on the applicant's MTR on December 27, 2000. Therefore, the applicant did not have an application for any relief from removal pending or subject to further review or appeal during the initial registration period. *Id.* Accordingly, the director's decision to deny the application on this ground 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 not met this burden.

ORDER: The appeal is dismissed.