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



U.S. Citizenship
and Immigration
Services

PUBLIC copy



FILE:



Office: VERMONT SERVICE CENTER

Date:

MAY 052008

[EAC 06 26371687]

INRE:

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.

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, Vermont 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, the applicant claims that he meets all of the requirements for late registration and that he was the victim of ineffective assistance by his immigration consultant.

The record reveals that the applicant filed a Form 1-821, Application for Temporary Protected Status, on September 17, 2001 [LIN 01 268 50552], during the initial registration period. The Director, Nebraska Service Center, denied that application on June 5, 2002, because the applicant failed to establish that he was a national of a foreign state designated by the Attorney General. In a February 26, 2005, letter, the applicant stated that he appealed this decision. However, the record does not contain an appeal of the director's June 5, 2002, decision.

The applicant filed Applications for Employment Authorization (Form 1-765) on November 12, 2002, and August 22, 2003, and attached a Form 1-821 application for re-registration. These re-registration applications were treated as supporting documentation for his applications for employment authorization. In denial letters dated January 22, 2003, and November 25, 2003, the applicant was advised that his applications for employment authorization were denied based on the denial of his TPS application on June 5, 2002. The applicant filed a Form 1-821 application on March 7, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the application on March 7, 2006. The applicant's appeal of that decision is the subject of a second decision of the AAO issued on this date. The applicant filed the current TPS application on June 14, 2006, indicating that it was 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. As noted above, the applicant filed the current application with CIS March 7, 2005.

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 1-589, Request for Asylum in the United States, on March 13, 1996, which was denied by the immigration judge (IJ) on June 13, 2000. The applicant was granted voluntary departure from the United States on or before July 13, 2000, with an alternate order of removal to take effect in the event that he failed to depart as required. The applicant appealed the U's decision to the Board of Immigration Appeals (BIA), and on June 26, 2001, the BIA administratively closed the case to allow the applicant to file for TPS. On June 5, 2002, following the denial of the applicant's September 17, 2001, application for TPS, Immigration and Customs Enforcement (ICE) moved the BIA to reinstate removal proceedings against the applicant. The BIA granted the request on April 28, 2006, after the applicant failed to submit an opposition to the request, and summarily affirmed the IJ's decision. On May 30, 2006, the applicant filed a petition for review before the United States Court of Appeals for the Sixth Circuit. The applicant also filed a motion to reopen before the BIA on July 26, 2006, which was denied on October 23, 2006.

The applicant timely filed his TPS application following the administrative closure of his removal proceedings before the BIA. That application was denied on June 5, 2002. Administrative closure of a case, however, is not a final order terminating the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). On April 28, 2006, the BIA reinstated the removal proceedings based on the denial of the applicant's request for TPS. Consequently, the record reflects that the applicant had an asylum request pending or subject to further review or appeal at the time he filed this current TPS application on March 7, 2005.

The applicant has submitted sufficient evidence to establish that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, he is eligible to file for late registration.

Nonetheless, the application cannot be approved as the record now stands. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. Us. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In addition to the grounds cited by the director, the record also reveals that the applicant has failed to submit sufficient evidence to establish that he is a national of EI Salvador or of another foreign state designated by the Attorney General that is eligible for TPS. In support of his September 17, 2001, TPS application, the applicant submitted an illegible copy of his birth certificate. In a December 13, 2001, Request for Evidence, the Director, Nebraska Service Center, advised the applicant that his name was not legible on his birth certificate, and requested that the applicant submit the original of his birth certificate or a copy of his passport. In response, the applicant submitted a document that was purportedly a translation of his birth certificate.

The regulation at 8 C.F.R. § 244.9(a) provides, in pertinent part:

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state . . . [T]he applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant's evidence of national identity consists only of an illegible birth certificate. He has submitted insufficient documentation to establish that he is a national of EI Salvador as required by 8 C.F.R. § 244.9(a)(1). Accordingly, the applicant has not established his ineligibility for TPS and the application must be denied.

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.