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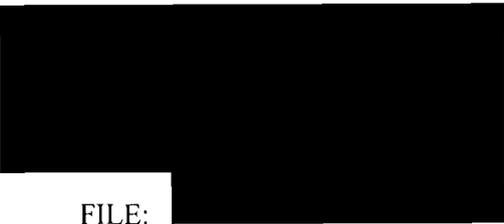
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE: [REDACTED]
[EAC 09 058 70451]

OFFICE: VERMONT SERVICE CENTER DATE: **APR 05 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

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.

Perry Rhew
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 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, the applicant asserts that during the initial registration period he filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal. The applicant asserts that he received a notice informing that his case has been referred to an immigration court in Miami, Florida.

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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The record reveals that the applicant filed his initial TPS application on November 24, 2008.

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 U.S. Citizenship and Immigration Services (USCIS). 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 March 9, 2009, 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 identity and his continuous physical presence in the United States from February 13, 2001, to the date of filing. The applicant, in response, provided a copy of his El Salvadoran passport and evidence of his qualifying residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 17, 2009.

The record reflects that on November 30, 1991, the applicant filed a Form I-589, Request for Asylum in the United States. On December 23, 1992, the asylum request was denied.¹ On June 6, 1994, the applicant filed a second Form I-589. A removal hearing was held on April 26, 1995, and the alien's asylum and withholding of deportation applications were denied by the immigration judge. The applicant was granted voluntary departure from the United States on or before May 26, 1995. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On September 27, 1995, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. On October 28, 1995, a Form I-205, Warrant of Deportation was issued. On November 18, 1999, the applicant filed a Form I-881. On August 31, 2005, the Form I-881 was dismissed.

The applicant, on appeal, submits a notice from the Miami District Office dated September 20, 2007, advising the applicant that his case had been referred to the immigration court in Miami.

There is no evidence in the record to show that a final order has been issued by the immigration court since the dismissal of the Form I-881. Accordingly, the applicant has established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the director's decision will be withdrawn and the application will be approved.

An alien applying for temporary protected status 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 met this burden.

ORDER: The appeal is sustained and the application is approved.

¹ The applicant failed to respond to a Notice of Intent to Deny that requested additional information be provided.