

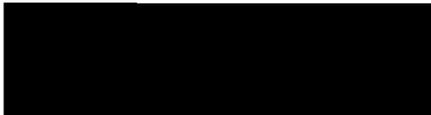
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M,

Date: Office: VERMONT SERVICE CENTER



MAY 11 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a citizen of El Salvador who is applying for 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 on the grounds that the applicant (1) failed to establish that he was eligible for late registration and (2) was ineligible for TPS because he committed acts of persecution.

On appeal, counsel asserts that the applicant (1) meets the requirements for late registration and (2) did not commit disqualifying acts of persecution.

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 Secretary of Homeland Security (Secretary) 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 Secretary 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.

El Salvadoran nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (USCIS) on December 28, 2008.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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 USCIS. See 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. See 8 C.F.R. § 244.9(b).

The director determined that the applicant failed to establish that he was eligible for late registration and denied the application on July 23, 2009. The director noted that an immigration judge denied the applicant's asylum application on November 3, 2006, and ordered the applicant's removal from the United States. It was more than two years later before the applicant filed his TPS application on December 28, 2008. This time lag far exceeded the 60-day maximum prescribed in 8 C.F.R. § 244.2(g) for the applicant to qualify for late TPS registration.

On appeal, counsel claims that the applicant qualifies for late registration through his wife, [REDACTED] whom he married in Downey, California, on March 7, 2006. [REDACTED] was granted TPS as a late registrant on June 9, 2009.

The AAO does not agree with counsel. The applicant does not qualify for late registration through his wife because he was not married to her during the initial registration period for TPS applicants from El Salvador, as required under 8 C.F.R. § 244.2(f)(2)(iv). The applicant's marriage to [REDACTED] on March 7, 2006 occurred three and a half years after the close of the initial registration period, which ran from March 9, 2001 to September 9, 2002. Accordingly, the marriage does not afford the applicant a legal basis to claim eligibility for late TPS registration.

The record does not establish that the applicant meets the requirements for late registration under 8 C.F.R. § 244.2(f)(2) and (g). Therefore, the director's decision to deny the application for TPS will be affirmed on that ground.

With regard to the other ground for denial in the director's decision, section 244(c)(2)(B)(ii) of the Act provides that an alien shall not be eligible for TPS under this section if the Secretary finds that the alien is described in section 208(b)(2)(A) of the Act.

Section 208(b)(2)(A)(i) of the Act states, in pertinent part:

- (A) In general – Paragraph (1) [which authorizes the granting of asylum] shall not apply to an alien if the Attorney General determines that – (i) the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

On appeal, counsel asserts that the applicant's actions while serving in the Salvadoran military did not include any acts of persecution as described above. Since the applicant is ineligible for TPS because he does not qualify for late registration, the AAO need not address the persecutor issue in detail. The AAO notes, however, that the only supporting document submitted on appeal is the transcript of the applicant's asylum interview, which was already in the record. Thus, there is no new evidence before the AAO on which to base a different determination on this issue.

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.

Finally, the AAO notes that the record includes the final order of the Immigration Judge, dated November 3, 2006, ordering the applicant's removal to El Salvador after his failure to appear for a hearing that day.

ORDER: The appeal is dismissed.