



U.S. Citizenship  
and Immigration  
Services

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*MI*

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JUN 27 2007

[WAC 05 223 82778]

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:

Self-represented

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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 had failed to respond to a request to submit evidence to establish that he was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 parole; 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on May 11, 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 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).

In a Notice of Intent to Deny (NOID) dated February 27, 2006, 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 to establish nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director noted that the applicant failed to respond to the NOID and denied the application on May 24, 2006.

On appeal, the applicant asserts that in 1997, his wife filed a [Form I-130] petition on his behalf; however, the "marriage went bad and she abandoned me and withdrew the application 2000 and would not continue with the process."

The record indicates that on February 17, 2001, the District Director, San Antonio, Texas, revoked the Forms I-130, Petitions for Alien Relative, filed by [REDACTED] (the applicant's wife) on March 3, 1996 and on February 10, 1997, based on a letter of withdrawal received from [REDACTED]. Also on February 17, 2001, the San Antonio district director denied the applicant's Application for Status as Permanent Resident (Form I-485) based on the withdrawal of the Form I-130 by the applicant's spouse. The applicant had

a 60-day period immediately following the denial of the application for adjustment of status, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), to file an application for late registration under TPS, and as provided in 8 C.F.R. § 244.2(g). However, the record in this case indicates that the denial of the application for adjustment of status was issued on February 17, 2001, prior to the initial registration period for El Salvadorans (from March 9, 2001, through September 9, 2002).

The applicant has failed 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 TPS application will be affirmed.

Beyond the decision of the director, it is noted that documents contained in the record of proceeding are insufficient to establish the applicant's qualifying residence and physical presence in the United States. In an attempt to establish continuous residence and continuous physical presence, the applicant, on appeal, submits copies of First National Bank statements and receipts dated from January 2001 through April 2001; Form W-2 Wage and Tax Statement for 2001; copies of Texas birth certificates of his children born on June 26, 1998 and on March 9, 2001; and copies of documents relating to his removal proceedings dated September 14 and 17, 1993. While these documents satisfy the applicant's residence and physical presence in the United States prior to the requisite period and until April 2001, no evidence was furnished for the period from May 2001 to the date of filing the TPS application on May 11, 2005. Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application will also be denied on these grounds.

Additionally, although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1), and as requested by the director on February 27, 2006. Therefore, the application will also be denied for this reason.

It is noted that in removal proceedings held on June 29, 1994, in Houston, Texas, the Immigration Judge denied the applicant's application for asylum and application for withholding of deportation, and ordered the applicant removed to El Salvador. A Warrant of Deportation, Form I-205, was issued on August 2, 1994.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 failed to meet this burden.

**ORDER:** The appeal is dismissed.