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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 24 2007

[EAC 06 311 71740]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

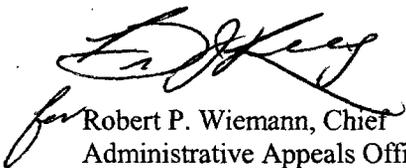
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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, Vermont Service (VSC), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 establish that he was eligible for late registration.

On appeal, counsel submits a statement.

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 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 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 March 9, 2009, 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 application on August 7, 2006.

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).

The record indicates that the applicant did file a TPS application during the initial registration period on March 26, 2001, under receipt number WAC 01 170 50280. The Director, California Service Center (CSC), denied that application based on abandonment on January 12, 2004, because the applicant had failed to respond to a request dated July 20, 2002, to submit evidence to establish his 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 applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current TPS application on August 7, 2005 (receipt number EAC 06 311 71740), and indicated that this is his "first application to register for Temporary Protected Status (TPS)." The VSC director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on October 19, 2004. She noted that the applicant claimed he was eligible for late registration because at the time of the initial registration period he had a TPS application pending. The director maintained that while TPS may confer benefits that temporarily delay the applicant from being removed, the temporary benefits of TPS do not equate to "relief from removal."

On appeal, counsel asserts that the director's contentions conflict with the plain language of the regulations. He states that a "TPS application is an application for relief from removal," in that (1) an alien who files a TPS application establishing *prima facie* eligibility is permitted to remain in the United States with employment authorization until a decision on his application is made; if the alien has a pending removal proceeding he is

entitled to an adjournment of his removal hearing; (2) while the "status" conferred on an alien who applies for TPS is not permanent it is nevertheless an immigration status. The regulation permits an alien who was granted voluntary departure during the initial registration period to apply for late initial registration. Voluntary departure is not a permanent immigration status; indeed, it is not a "status at all; (3) the director's finding that TPS is not an application for relief from removal because it is not a form of "discretionary relief" conflicts with the plain language of 8 C.F.R. §244.10(b) which plainly directs that a grant of TPS is discretionary; (4) Federal courts that have constructed INA § 244 have found that an alien achieves a lawful immigration status in the United States when granted TPS. *U.S. v Orellana*, 405 F.3d 360, 364 (5th Cir. 2005); (5) the USCIS considers TPS to be a lawful immigration status. The USCIS's website lists TPS as a nonimmigrant classification; (6) the USCIS's website informs that an alien granted TPS "reverts" to an unlawful status upon termination of TPS.

Counsel's assertions on appeal are without merit. There is no evidence in the record that during the initial registration period for El Salvadorans, the applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal; 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; is a parolee or has a pending request for reparole; or is a spouse or child of an alien currently eligible to be a TPS registrant. Pending TPS applications do not fall under any of the categories listed in 8 C.F.R. § 244.2(f)(2). Further, TPS does not lead to permanent resident status, nor is it an adjustment of status, but, rather, it is granted to eligible nationals of designated countries suffering the effects of an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions of designated countries, to live and work in the United States. During the period for which the Secretary of Homeland Security has designated a country for TPS, beneficiaries may not be removed from the United States and are authorized to engage in employment. When the Secretary terminates a country's designation, a TPS beneficiary will return to the status he/she had prior to TPS, provided the applicant maintained that status, or to any other status he/she may have obtained while registered for TPS.

While TPS may confer benefits that temporarily delay the alien's removal, as maintained by the VSC director, the temporary benefits of TPS do not equate to "relief from removal;" nor do pending TPS applications render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

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 on this ground will be affirmed.

Beyond the decision of the director, it is noted that documents contained in the record of proceeding are insufficient to establish that the applicant has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for this reason.

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.