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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]

Office: VERMONT SERVICE CENTER

Date: APR 02 2009

[EAC 08 133 51422]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 dismissed.

The applicant is a native and 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 because the applicant failed to establish he was eligible for late registration.

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits some evidence in support of his claim.

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, 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 section 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 conditions described in paragraph (f)(2) of this section.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with U.S. Citizenship and Immigration Services (USCIS), on June 7, 2007.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 October 11, 2007, 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 a copy of his identity document. The applicant, in response, provided some evidence of his continuous residence and continuous physical presence in the United States, as well as copies of his California Driver License and El Salvadoran passport; however, he did not submit any evidence to establish his eligibility for late registration. The director, therefore, determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 7, 2008.

On appeal, counsel asserts that the applicant is eligible for TPS late registration because he had a motion to reopen pending before the Executive Office of Immigration Review (EOIR) during the initial registration period. Counsel also states that the applicant filed an application for adjustment of status in December 2005, therefore, the applicant has met the criteria described in 8 C.F.R. § 244.2(f)(2). Counsel also provides copies of the applicant's El Salvadoran passport, California Driver License, Employment Authorization Documents (EADs), and copies of the final decision from the Board of Immigration Appeals dated January 5, 2004.

A review of the record shows that the applicant filed an application for adjustment of status on December 15, 2005. That application was administratively closed on February 17, 2006, because the applicant was subject to a final order of deportation under the jurisdiction of the Immigration Court.

A review of the record of proceedings reflects that the applicant was granted voluntary departure from the United States until November 23, 1988. On August 30, 2002, the applicant filed a motion to reopen his deportation proceedings. That motion was denied by the EOIR on February 12, 2003. The applicant's subsequent appeal to the Board of Immigration Appeals (BIA) was dismissed on January 5, 2004.

Counsel asserts that the applicant had a motion to reopen his deportation proceedings pending before the Service; therefore, the applicant met the criteria under described in 8 C.F.R. § 244.2(f)(2) since he had "relief from removal pending or subject to further review of appeal." Counsel also states that applicant had a pending adjustment of status application as well.

According to the record, the applicant's appeal to the Board of Immigration Appeals (BIA) was dismissed on January 5, 2004. The applicant's application for adjustment of status was administratively closed on February 17, 2006. The applicant filed his TPS application on June 7, 2007. The regulations require that a late registration for TPS be filed within a 60 -day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section. 8 C.F.R. § 244.2(g). Therefore, the applicant has failed to establish his eligibility for late registration under 8 C.F.R. § 244.2(g). Consequently, the director's conclusion that the applicant failed to establish his eligibility for TPS late registration will be affirmed.

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.