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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DEC 24 2004

FILE: 

Office: CALIFORNIA SERVICE CENTER

Date:

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.

Robert P. Wiemann, Director
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 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 failed to establish his identity and his eligibility for late registration. The director also denied the application because the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement and copies of evidence previously submitted for incorporation into the record of proceeding.

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 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 § 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.

The phrase 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.

The phrase 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on November 6, 2003.

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 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 first issue in this proceeding is whether the applicant has provided proof of identity and nationality.

Pursuant to 8 C.F.R. § 244.2(a)(1), each application for TPS must be accompanied by evidence of the applicant's identity and nationality, if available. Acceptable evidence of identity and nationality may consist of a passport, birth certificate accompanied by photo identification, or any national identity document from the alien's country of origin bearing photo and/or fingerprint.

In this case, the applicant has provided photocopies of the biographic pages of his Salvadoran passport, along with a photocopy of his birth certificate with English translation. It is concluded that the applicant has provided sufficient evidence to establish his identity and nationality; therefore, the applicant has overcome this ground for denial of the application, and the director's decision to deny the application on this basis is withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 he 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 director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 3, 2004.

On appeal, the applicant states that he did not register for TPS during the initial registration period because he could not afford to pay the registration fees for himself and his family. The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The third issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant submitted the following evidence in an attempt to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001:

1. his 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, reflecting an annual business income of \$10,000;

2. his 2001 California Form 540, California Income Tax Return, reflecting an adjusted gross income of \$9,293;
3. his 2002 IRS Form 1040 reflecting an annual business income of \$6,000;
4. his 2002 California Form 540, California Individual Income Tax Return, reflecting an adjusted gross income of \$5,576; and,
5. a letter dated November 4, 2003, from [REDACTED] stating that the applicant has worked for her company as a messenger since January 19, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence and physical presence in the United States and denied the application on March 3, 2004.

On appeal, the applicant submits photocopies of the documents previously submitted; however, he does not make a statement or provide any additional evidence in an attempt to establish his continuous residence and physical presence in the United States.

The employment affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the name of the organization for which the applicant worked during the requisite periods or the address(es) where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of her organization, or verify that the business was even located inside the United States.

The income tax returns submitted with the initial application are not sufficient to establish the applicant's continuous residence and physical presence in the United States. The applicant did not provide any evidence in the form of certification that these returns were actually filed with the IRS or the State of California. Further, they are not supported by independent evidence of the applicant's employment such as pay statements or an IRS Form 1099-MISC, Miscellaneous Income.

The applicant has not submitted sufficient, credible evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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.