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**U.S. Citizenship
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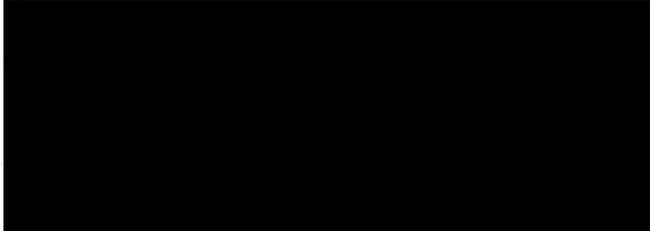
Office: VERMONT SERVICE CENTER

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:



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
Robert P. Wiemann, Director
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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from March 9, 2001 through September 9, 2002. The director also determined that the applicant had not submitted sufficient evidence to establish that he had maintained continuous physical presence in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant did not file his application for TPS after the deadline on September 9, 2002. Counsel maintains that the TPS application "must have" been postmarked prior to September 9, 2002, as the receipt notice indicates the application for TPS was received at the Vermont Service Center on September 12, 2002. Counsel submits additional evidence of the applicant's residence in the United States.

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 as 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 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 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 entry on or prior to February 13, 2001, 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. 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.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 12, 2002.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant 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 or she 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 first issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since March 9, 2001.

On March 21, 2003, the applicant was requested to submit evidence establishing his qualifying physical presence in the United States. The applicant was also requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted evidence of his residence in the United States as of December 2000. On April 24, 2004, the director concluded that the applicant had failed to submit evidence to establish his physical presence in the United States during the requisite period and denied the application.

On appeal, the applicant reiterates his claim to eligibility for TPS, and submits the following evidence:

- 1.) affidavit from [REDACTED] who states that he has known the applicant as a friend and as a church member since December 2000;
- 2.) affidavit from [REDACTED] who states that he has known the applicant since January 2000;
- 3.) a March 10, 2003 statement from [REDACTED] Dix Hills, New York, who states the applicant is an employee; and,
- 4.) an April 3, 2003 statement from [REDACTED] who states the applicant came to the company office two years ago in search of a position, but that he was not hired at that time because he did not have the necessary documentation.

The evidence submitted by the applicant does not establish his claim of eligibility for TPS. The statements from [REDACTED] regarding the applicant's claimed presence in the United States prior to March 9, 2001, are not supported by any corroborative evidence. Affidavits are not, by themselves, persuasive evidence of residence or presence. The applicant claims to have resided in the United States since January 1999. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support this assertion; however, no such evidence has been provided. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application on this ground is affirmed.

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

The record of proceeding confirms that the applicant filed his application for TPS on September 12, 2002, after the initial registration period for El Salvadorans had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant 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 or she 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).

As stated above, on March 21, 2003, the applicant was requested to submit evidence establishing his physical presence in the United States, and to establish his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided documentation relating to his residence in the United States; however, he did not submit any documentation to establish that he was eligible for late registration.

On April 24, 2003, the director determined that the applicant had not established that he was eligible for late registration and denied the application.

On appeal, counsel asserts that the applicant filed the application for TPS on time, and that it had presumably been mailed prior to the end of the registration period as it was received at the Vermont Service Center on September 12, 2002. As pointed out by the director, and as stated above in 8 C.F.R. § 244.2(f)(1), an applicant is eligible for TPS if he **registers** for TPS during the initial registration period announced by public notice in the *Federal Register*. According to 8 C.F.R. § 244.1, "**register**" means to "**properly file**" a completed application, with proper fee, for Temporary Protected Status during the registration period designated under 244(b) of the Act. 8 C.F.R. § 103.2(a)(7) states in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204, part 245 or part 245a of this chapter, shall be regarded as **properly filed** when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

The Form I-821, Application for Temporary Protected Status, was received at the Vermont Service Center at 8:56 a.m., on September 12, 2002, after the initial registration period for El Salvadorans had expired.

The applicant has not furnished any evidence to establish that he met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground also will be affirmed.

The burden of proof is upon the applicant to establish 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.