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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: Nebraska Service Center

Date: SEP 13 2004

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: Self-represented

PUBLIC COPY

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, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish he had entered the United States prior to February 13, 2001; maintained residence in the United States since February 13, 2001; and maintained physical presence in the United States since March 9, 2001 to the date of filing his application.

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 record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on February 26, 2003. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on August 7, 2003. The director denied this second application because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also found that the applicant had failed to establish he had entered the United States prior to February 13, 2001; maintained residence in the United States since February 13, 2001; and maintained physical presence in the United States since March 9, 2001 to the date of filing his application.

The applicant's initial Form I-821 was properly filed on September 5, 2002. That initial application was denied by the director on February 26, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821, on August 7, 2003. Since the initial application was denied on February 26, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 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 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).

On September 10, 2003, 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 establishing his qualifying residence and physical presence in the United States. In addition, the applicant was requested to submit a current photo identity document.

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

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 applicant, in response to the director's request, provided documentation relating to his residence and physical presence in the United States. The director determined that the applicant had failed to establish eligibility for TPS and denied the application on November 13, 2003.

On appeal, the applicant stated that he believes that he had submitted plenty of evidence establishing his physical presence in the United States. The applicant also submitted additional documentation in support his claim of eligibility for TPS.

Along with his appeal, 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 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 second issue in this proceeding is whether the applicant has established his entry into the United States prior to February 13, 200; maintained residence in the United States since February 13, 2001; and maintained physical presence in the United States since March 9, 2001 to the date of filing his application.

As stated above, the applicant was requested on September 10, 2003 to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

1. A copy of an affidavit dated January 30, 2003, from [REDACTED] who stated that the applicant had lived with him since February 5, 2001.
2. An undated copy of a letter from an acquaintance, [REDACTED] who stated that he had met the applicant in the year 2000.
3. A copy of an employment letter dated May 20, 2002, from [REDACTED], who stated that the applicant had worked for him from January 5, 2001 to April 20, 2001.
4. A copy of an Applicant Information Worksheet dated October 11, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on November 13, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

5. Copies of his money transfers dated December 28, 2000 and February 10, 2001, from El Cairo Express.
6. Copies of hand-written rent receipts dated from February 5, 2001 through October 1, 2001.
7. Copies of his Salvadoran photo identification cards.

The statements from [REDACTED]s detailed in No. 1 above, regarding the applicant's claimed presence and residence in the United States, are not supported by credible evidence. Affidavits from acquaintances are not, by

themselves, persuasive evidence of residence or presence. The letter from [REDACTED] as detailed in No. 2 is not signed or dated and thus, has no probative value.

The employment letter from [REDACTED] No. 3 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, [REDACTED] does not provide the address where the applicant resided during the period of his employment. Further, no evidence of this employment in the form of pay receipts, Internal Revenue Service documents, etc., are included in the record.

Further, the money transfer receipts as detailed in No. 5 above, are not validated or signed by an authorized agent of El Cairo Express; thus, it cannot be determined from the submitted documents that such transactions, in fact, were completed.

The hand-written rent receipts, detailed in No. 6 above, are not supported by any credible evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since August 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his 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 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.