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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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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 07 2005
[EAC 03 050 51661]

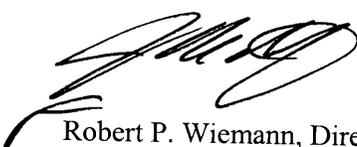
IN RE: Applicant: [REDACTED]

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

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, 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 establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he did not receive any letter pertaining to his case. The applicant also provides additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period.

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

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.

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.

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 September 9, 2006, 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 initial application on September 21, 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. See 8 C.F.R. § 244.2(g).

On May 28, 2003 the applicant was provided the opportunity 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 continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001. The applicant failed to respond to the request. Therefore, the director denied the application.

On appeal, the applicant states that he never received any letter pertaining to his case because he moved to a new address and failed to inform CIS officially. According to the applicant, he dated and mailed the application on September 6, 2002 and he cannot help that it was delivered late. It appears the applicant had assistance in preparing the application. However, CIS is not responsible for inaction of the applicant's representative. The applicant is responsible for insuring that his application is filed timely. 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 failed to establish his eligibility for late registration will be affirmed.

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

As stated above, the applicant was requested on May 28, 2003 to submit evidence establishing his qualifying residence and physical presence in the United States. In addition, the applicant was requested to provide evidence that he is a citizen or national of El Salvador. The applicant failed to respond to the request. The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant furnishes statements from [REDACTED] and [REDACTED] Ms. [REDACTED] identified as a Human Resources employee at Simply Lite Foods Corp. in Commack, New York, states that her company has employed the applicant since January 2, 2002. Ms. [REDACTED] statement 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, Ms. [REDACTED] does not provide the address where the applicant resided during the period of his employment. It is further noted that Ms. [REDACTED] did not indicate the applicant's duties of employment. Ms. [REDACTED] asserts that the applicant has rented a room from her at [REDACTED] in [REDACTED] from March 1, 2003 to the present. This statement is not supported by any corroborative evidence. Regardless, both statements attest to the applicant's presence in the United States subsequent to the qualifying dates for entry, continuous residence and continuous physical presence only, and are therefore of no probative value.

Ms. [REDACTED] states that the applicant rented a room from her at [REDACTED] from May 1, 2000 to February 28, 2003. However, as with Ms. [REDACTED] statement, this statement is not supported by any corroborative evidence. 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 not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the periods from February 13, 2001 and March 9, 2001 respectively. 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 temporary protected status on this ground will also be affirmed.

Beyond the director's decision it is noted that the applicant also failed to establish that he is a citizen or national of El Salvador. Consequently, the application must be denied on this basis as well.

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.