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



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE:

[REDACTED]

[EAC 03 143 50742]

Office: VERMONT SERVICE CENTER

Date: AUG 01 2008

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 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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a letter and additional documentation.

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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on April 7, 2003.

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 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of the applicant's initial TPS application, counsel submitted the following documentation:

1. A photocopy of an extract of an El Salvadoran birth certificate, with English translation, for [REDACTED]. The extract was issued in El Salvador on June 24, 2002, and the mother's name is listed as [REDACTED].
2. A photocopy of a "Certificate of Marriage" indicating that [REDACTED] and [REDACTED] married in New Jersey on April 28, 2000; and,
3. A photocopy of an Employment Authorization Card (EAD) issued to [REDACTED] valid from September 10, 2002 to October 10, 2003.

On May 27, 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 to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel submitted:

4. Photocopies of a partially illegible New Jersey Department of Health and Senior Services "Certificate of Marriage" and of a "Marriage License;" and,
5. Photocopies of envelopes addressed to [REDACTED] postmarked February 9, 2001; March 15, 2001; April 18, 2001; and, May 25, 2001.

The director determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also determined that the applicant had failed to establish his eligibility for late registration. The director denied the application on October 21, 2003.

On appeal, counsel states that the applicant is eligible for late registration because he "was the child of an alien currently eligible to be a TPS registrant." In support of the appeal, counsel submits the following additional documentation:

6. A legible photocopy of No. 4, above, indicating that [REDACTED] and [REDACTED] were married in Guttenberg, New Jersey, on April 28, 2000; and,
7. A photocopy of a receipt from Top Quality Electronics, Inc, West New York, New Jersey. The applicant's name and date, May 11, 2001, are handwritten on the receipt.

The first issue to be addressed is whether the applicant has established he is eligible for late registration.

Counsel asserts that the applicant is the child of [REDACTED] a TPS eligible alien. In support of this claim, counsel has submitted an extract of a birth certificate issued in 2002, purported to be the applicant's, and a photocopy of [REDACTED] marriage certificate and EAD. No identity document bearing the applicant's photograph and/or fingerprint has been provided.

A review of the alien registration file relating to [REDACTED] reveals that she filed an initial TPS application on July 2, 2001. That application was approved on April 3, 2002. At the time of filing her initial application, Mrs. [REDACTED] indicated that she had only two children, [REDACTED] and [REDACTED] who were residing in El Salvador. When filing applications for annual re-registration of her TPS on September 25, 2002, and August 15, 2003, Mrs. [REDACTED] also indicated that she had only the two children previously claimed on her initial application. It was not until April 17, 2004, when filing a Form I-589, Application for Asylum and Withholding of Removal, that the applicant indicated that she had a third child, [REDACTED].

The record confirms that the applicant filed his TPS application after the initial registration period had expired. It is concluded that, based on the above discussion, the applicant has failed to submit sufficient evidence that he is the child of an alien currently eligible to be a TPS registrant. Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing his application on April 7, 2003.

On his initial Form I-821, the applicant indicated that he entered the United States on an unspecified date in 2001. On her Form I-589, Mrs. [REDACTED] also did not indicate the specific date in 2001 that the applicant had entered the United States. The only documentation submitted in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States are Nos. 5 and 7, above, a hand-written receipt and postmarked envelopes addressed to a different name, dating from February 9, 2001 to May 15, 2001.

Based on a review of the record, it is further concluded that the applicant has not submitted sufficient objective evidence to establish that he satisfies the continuous residence and continuous physical presence requirements 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 these grounds will also be affirmed.

It is noted that, beyond the decision of the director, the applicant has not submitted an identity document bearing his photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii). The application may also not be approved for this reason.

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.


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ORDER: The appeal is dismissed.