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U.S. Citizenship
and Immigration
Services



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FILE:

[REDACTED]
[LIN 03 267 51949]

Office: NEBRASKA SERVICE CENTER

Date: AUG 03 2005

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, 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 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 believes that he has provided all of the proof necessary to show that he was in the United States since February 2001.

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 on March 22, 2001. That application was denied on September 12, 2001, for failure to respond to appear for fingerprinting as required by 8 C.F.R. § 103.2. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 12, 2003. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also found that the applicant failed to establish continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing of the TPS application.

The applicant's initial Form I-821 was properly filed on March 22, 2001. That initial application was denied by the director on September 12, 2001. 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 September 12, 2003. Since the initial application was denied on September 12, 2001, 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 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 this application on September 12, 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 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 March 9, 2001 through September 9, 2002, 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. 8 C.F.R. § 244.2(g).

On November 3, 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, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he has provided all of the evidence necessary to show that he was in the United States since February 2001. 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 and third issues in this proceeding are 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.

In support of his application the applicant submitted the following:

1. Copies of his previous employment authorization card, his social security card and a Colorado Driver License issued on July 3, 2002.

2. A copy of a Form I-687 Approval notice for employment authorization dated May 3, 2001.
3. An undated copy of a printout from U.S. Bank Aurora, Colorado.
4. A copy of a Colorado Registration Tax Receipt dated April 17, 2001, a copy of a Colorado Dealer's Bill of Sale for a Motor Vehicle dated April 22, 1999, a copy of a Buyers Order and Invoice dated April 22, 1999 and a copy of a Vehicle Sale Receipt dated November 3, 2001.
5. A copy of a letter from Internal Revenue Service dated October 27, 2000, a copy of 2000, 2001, 2002, Form 1040 U.S. Individual Income Tax Return and supporting tax documentation.
6. A copy of a letter from Social Security Administration dated August 8, 2001.
7. A copy of an American Family Insurance Group Personal Insurance Review dated September 5, 2003.

As stated above, the applicant was requested on November 3, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

8. A letter from Adan Alvarado, President of Alvarado Contracting Inc. who states that he has employed the applicant since 2000.
9. A copy of the applicant's marriage license showing the applicant was married on October 15, 1999.
10. A copy of a birth certificate for the applicant's daughter indicating she was born on May 13, 2000.
11. A copy of a Colorado Registration/Ownership Tax Receipt showing a purchase date of April 22, 1999, a copy of a Colorado Dealer's Bill of Sale for a Motor Vehicle dated November 2, 2001, and a copy of a Public Auto Auction Buyer's Order dated November 2, 2001.
12. A copy of a customer history report from Spotlight Video Aurora, Colorado issued on November 11, 2003.
13. Copies of bank statements from US Bank Denver, Colorado showing statement periods from January 12, 2001 through February 12, 2001, April 12, 2001 to May 10, 2001, August 11, 2001 to September 13, 2001, September 14, 2001 to October 11, 2001, November 27, 2001 to November 30, 2001, December 3, 2001 to December 31, 2001, January 2, 2002 to January 31, 2002, March 20, 2002 to March 25, 2002, February 27, 2003 to March 25, 2003, and copies of checks written to pay rent dated April 2, 2002, October 1, 2002, March 3, 2003, and April 1, 2003.

14. A copy of a Rent-A-Center rental agreement dated January 17, 2002
15. A copy of a letter from AT&T dated October 29, 2001 and a copy of an AT&T statement dated December 25, 2001.
16. A copy of a renter's statement of account dated November 29, 2001.
17. Copies of Excel Energy Denver, Colorado bills dated December 21, 2001 and May 23, 2001.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods, specifically March 2003 through September 2003, and denied the application. On appeal, the applicant fails to submit and additional evidence. According to the applicant, he did not present evidence of his presence in the United States from March 2003 to September 2003 because "the paperwork was sent in March therefore I gave proof up until that month." However, the applicant's Form I-821 was signed on September 10, 2003 and received by the Nebraska Service Center on September 12, 2003. Therefore, the applicant is required to establish continuous residence and continuous physical presence through the date of filing his application. The evidence presented by the applicant establishes his presence in the United States prior to February 13, 2001. However, as indicated by the director, the applicant has not established his continuous residence and continuous physical presence from March 2003 to September 5, 2003. The only evidence the applicant presented for this time period is a copy of a check written on April 1, 2003. However, that check alone does not establish the applicant's continuous residence and continuous physical presence during the aforementioned period.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date of filing the TPS application. 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 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.