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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

[LIN 03 275 51187]

Office: NEBRASKA SERVICE CENTER

Date: AUG 03 2005

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, 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 because the applicant failed to submit evidence to establish his identity and nationality. The director also denied the application because the applicant failed to establish that he was eligible for late registration. Finally, the director found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on September 15, 2003.¹

¹ It is noted that the applicant filed a prior Form I-821 on September 10, 2002, which was denied on March 5, 2003. Since the initial application was denied, the current application must be considered to be a new application for TPS that was filed outside the initial registration period.

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).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his identity and nationality.

The applicant initially submitted a photocopy of his Salvadoran birth certificate with English translation, but he failed to provide a national photo identification document with his photograph and/or fingerprint.

On November 25, 2003, the applicant was requested to provide evidence of identity and nationality, evidence to establish her eligibility for late initial registration, and evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted a photocopy of his State of Washington Driver's License issued on July 17, 2003.

The director determined that the applicant failed to establish his identity and nationality and denied the application on February 12, 2004.

On appeal, the applicant submits a photocopy of his Salvadoran nationality document (cedula) bearing his photograph and thumbprints.

The applicant has established his identity and nationality, and this ground for denial of the application has been overcome.

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

The record of proceedings 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, 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).

As stated previously, the applicant was requested on November 25, 2003, 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 in an attempt to establish his identity, but he failed to provide any evidence to establish his eligibility for late registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 12, 2004.

On appeal, the applicant submits evidence of identity and nationality and additional evidence relating to his residence and physical presence in the United States.

However, this evidence does not mitigate the applicant's failure to file his Form I-821, 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 third issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following:

1. a letter from [REDACTED] stating that the applicant "has been working and living with me since he came to the United States in December 2000;"
2. a photocopies of three mailing envelopes with illegible postmarks;
3. a photocopy of his Washington Driver License issued on December 26, 2002;
4. a letter dated August 28, 2002, from Kelly Nunley of B&H Drywall, Inc., in Woodinville, Washington, stating that the applicant has been working for her company for "a couple of months;"
5. a letter dated March 21, 2003, from [REDACTED] stating that she has known the applicant "since December 2000;"

On November 25, 2003, the applicant was requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted a photocopy of a Washington Driver License issued on July 17, 2003.

The director denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits the following:

6. photocopies of money transfer receipts dated November 16, 2002; December 29, 2002; and July 27, [year illegible];
7. photocopies of pay statements from B&H Drywall, Inc., dated: August 22, 2003; September 5, 2003; and January 22, 2004; and,
8. a photocopy of a Mary Kay order dated December 29, 2000.

The applicant has submitted evidence reflecting his residence and physical presence in the United States in 2002 and 2003, but he has submitted only letters to establish his residence and physical presence in the United States in 2001. The applicant claims to have lived in the United States since December 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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.

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.