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FILE:

[REDACTED]
[LIN 03 255 50259]

Office: NEBRASKA SERVICE CENTER

Date: **AUG 19 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.

Cecily M. Homan for
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 (AAO) 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 establish that he was eligible for late registration. The director also found that the applicant had failed to establish his date of entry into the United States prior to February 13, 2001, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits 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 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.

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. 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 with validity of the latest extension 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 reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 25, 2003.

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 is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late registration. 8 C.F.R. § 244.2(g).

On September 17, 2003, the applicant was requested to submit evidence establishing his eligibility for registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing: his date of entry into the United States; 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 addition, the applicant was requested to submit photo identification, such as a passport, driver's license, or a national identification document bearing a photograph and/or fingerprint.

In response, the applicant submitted photocopies of the following documentation: his El Salvadoran cedula dated December 30, 1998; his Minnesota driver's license with an expiration date of July 4, 2006; a Northern States Power Company billing statement dated August 2, 2000; an Xcel Energy billing statement dated September 2003; Qwest billing statements dated January 16, 2002 and August 16, 2003; a Charter Communications billing statement dated April 28, 2001; a rent receipt from Viking Terrace dated September 2, 2003; an undated letter from a Customer Service Representative, Farmers Insurance Group, Northfield, Minnesota, stating that the applicant has been a customer since November 1997; and, two Western Union receipts dated "03/05/00."

The director determined that the applicant had failed to establish he was eligible for late registration, and denied the application on December 3, 2003.

On appeal, the applicant states that he is submitting evidence for the period requested that he believes will be sufficient to establish his physical presence in the United States. In support of the appeal, the applicant submitted additional evidence consisting of: a certified State of Minnesota Department of Public Safety, Driver and Vehicle Services record inquiry reflecting that the applicant was issued an identification card on May 7, 1997, that expired on July 4, 2001, and a driver's license issued on July 16, 2002, that will expire on July 4, 2006; pay stubs from Valley Temporary Staffing, Inc., and Olsten Staffing Services, dated in 1997; pay stubs from Econote Personnel Services dated in 2001; pay stubs from Alliant Foodservice, Inc., dated in 2001 and 2002; a Charter Communications billing statement dated February 13, 2001; a loan payment ledger dated in 2002; a credit reference dated December 9, 2003, from Xcel Energy, Minneapolis, Minnesota, reflecting that the applicant has been a customer since June 3, 2000; two letters from Capital One Services, Inc., Richmond, Virginia, dated December 9, 2003, in reference to two accounts dating from October 4, 2001 and May 18, 2003; a letter dated December 16, 2003, [redacted] that the applicant signed a lease agreement with Viking Terrace on October 19, 2001, and continues to reside there; and, a letter dated December 9, 2003, from the Cultural Diversity Coordinator for the City of Northfield, Minnesota, detailing records of the applicant's contact with that office on April 9, 2001, July 1, 2002, July 22, 2002, November 25, 2002, February 26, 2003, October 21, 2003, and December 9, 2003.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant did not submit 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 decision to deny the application for temporary protected status will be affirmed.

The additional issues in this proceeding are whether the applicant has established his date of entry prior to February 13, 2001, 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 September 17, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response to this request, the applicant submitted evidence as specified above.

The director concluded that the applicant had failed to establish his date of entry into the United States prior to February 13, 2001, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and denied the application.

On appeal, the applicant submits additional evidence as specified above.

The evidence submitted on appeal, in combination with the other evidence of record, reflects that the applicant was physically present and had established a residence in the United States during the requisite periods. The applicant has, therefore, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and has overcome these findings of the director.

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.