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FILE: [REDACTED]
[EAC 04 132 52279]

Office: VERMONT SERVICE CENTER

Date: DEC 05 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, 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 denied the application because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish continuous physical presence in the United States since March 9, 2001.

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

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. That application was denied on March 26, 2003, for failure to respond to a request for evidence to establish his eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant filed a request for a motion to reopen on November 5, 2003. The director dismissed the motion on May 14, 2004, because it was not filed within 30 days of the issuance date of the denial decision.

The applicant filed a second motion to reopen the matter on May 24, 2004. The director dismissed the second motion to reopen on July 26, 2004, because it did not meet the requirements for a motion to reopen or a motion to reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 11, 2004. The director denied this second application, in part, 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. Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of this basis for denial. While the director found the applicant ineligible for TPS, in part, because he had failed to establish his eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 12, 2001. That initial application was denied by the director on March 26, 2003, and the applicant's motions to reopen the matter were dismissed on May 14, 2004, and July 26, 2004, respectively. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a final 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 March 11, 2004. Since the initial application was denied on March 26, 2003, and two motions to reopen were dismissed on May 14, 2004, and July 26, 2004, respectively, 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 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.

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 the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his current Form I-821 with Citizenship and Immigration Services (CIS) on March 11, 2004.

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 current TPS 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On June 2, 2004, 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 establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted documentation relating to his residence and physical presence in the United States, along with photocopies of documents relating to the filing of his prior form I-821 on March 12, 2001.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 28, 2004.

On appeal, the applicant states that he filed a Form I-821 during the initial registration period and doesn't understand why his current TPS application has been denied. He submits copies of notices relating to the filing of his prior Form I-821 and Form I-765, Application for Employment Authorization, on March 12, 2001, and the filing of his motions to reopen and reconsider on November 5, 2003, and May 24, 2004, respectively.

As previously stated, the applicant's prior Form I-821 was denied on March 26, 2003, and two motions to reopen the matter were dismissed on May 14, 2004, and July 26, 2004, respectively. The current TPS application was not filed until March 11, 2004, and can only be considered as a late initial registration. 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 second issue in this proceeding is whether the applicant has established continuous physical presence in the United States since March 9, 2001.

The applicant claimed on his Form I-821 that he entered the United States without inspection in December 1996. The applicant has submitted the following evidence in support of his claim:

1. a letter dated September 10, 2003, from [REDACTED], Pastor of Iglesia Apostolica Fuente del Libano Efesios 2:20 in Riverdale, Maryland, stating that he knows the applicant has resided at "[REDACTED]" since his arrival in the United States in December 1996;
2. documentation relating to his residence and physical presence in the United States in 1997, 1998, and 1999;
3. a photocopy of a customer bill from [REDACTED] in Alexandria, Virginia, dated July 22, 2000;
4. a photocopy of the biographic page of his Salvadoran passport issued in Washington, D.C., on March 27, 2002; and,
5. photocopies of earnings statements from [REDACTED] in Falls Church, Virginia, dated: February 18, 2001; February 25, 2001; March 28, 2001; April 22, 2001; May 13, 2001; June 3, 2001; June 10, 2001; and, June 17, 2001.

As stated above, the applicant was requested on June 2, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted copies of evidence previously submitted in support of his TPS applications.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous physical presence in the United State since March 9, 2001, and denied the application.

On appeal, the applicant repeats his claim to have lived in the United States since December 1996, but he does not submit any additional evidence to establish his qualifying continuous physical presence in the United States during the requisite period.

The documents reflecting the applicant's residence and physical presence in the United States in the period from 1997 through 2000 (Nos. 2 and 3 above) have no probative value because they are dated prior to the requisite period to establish continuous physical presence in the United States.

The letter from [REDACTED] (No. 1 above) 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)(v). Specifically, the letter is not in affidavit form, and the pastor does not provide the exact dates of the applicant's membership in his church.

The applicant has not submitted any evidence to establish his continuous physical presence in the United States during the periods from June 17, 2001, the date of his latest earnings statement (No. 5 above), to March 27, 2002, the issuance date of his passport (No. 4 above), nor has he submitted any evidence to establish his continuous physical presence in the United States from March 27, 2002, to March 11, 2004, the filing date of his current Form I-821.

The applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States throughout the requisite period. He has, therefore, failed to establish that he has met the requirement described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Beyond the decision of the director, the applicant has also failed to submit sufficient evidence to establish continuous residence in the United States during the requisite period as described at 8 C.F.R. § 244.2(c). Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.