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U.S. Citizenship
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Services

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FILE:

[REDACTED]
[EAC 04 119 52938]

Office: Vermont Service Center

Date: DEC 12 2005

IN RE:

Applicant: [REDACTED]

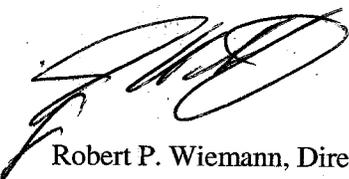
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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 respond to a request for evidence to establish his eligibility for late registration. The director also found that the applicant had failed to establish that he had resided in the United States since February 13, 2001, and that he had remained continuously physically present in the United States from March 9, 2001, to the date of filing his application. Therefore, the grounds of denial had not been overcome.

On appeal, counsel, on behalf the applicant, asserts the applicant's claim of eligibility for TPS late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 application with the Citizenship and Immigration Services (CIS), on March 12, 2004.

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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she 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).

On April 9, 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 to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The director determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome. The director, therefore, denied the application on September 3, 2004.

On appeal, counsel argues that the Service should grant the applicant's TPS without regard to the date of his arrival to the United States. In addition, counsel also provides a statement regarding the health condition of the applicant's mother, Ms. [REDACTED], who is residing in El Salvador.

The first issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States.

A review of the record of proceedings reflects that the applicant was apprehended by the United States Border Patrol on February 21, 2004, at or near La Joya, Texas, while attempting to enter the United States illegally. The record also reveals that the applicant stated that he departed El Salvador on February 10, 2004, traveled through Guatemala, and arrived in Reynosa, Mexico on February 20, 2004. It is also noted that the applicant stated that he was en route to the United States in order to live with his brother in the United States and to seek employment. Therefore, the applicant could not have met the requirements that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The applicant has, thereby, 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 TPS on these grounds will be affirmed.

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

A review of the CIS' electronic systems reflects that the applicant's father, Mr. [REDACTED] is an eligible TPS registrant. As such, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). However, as described above, the applicant has not met the continuous residence and continuous physical presence eligibility requirements for TPS. Therefore, the applicant remains ineligible and the director's decision will be affirmed.

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 TPS 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.