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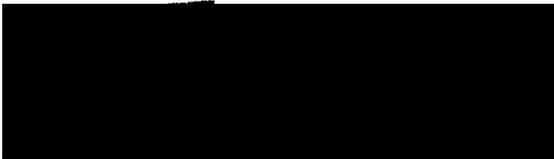
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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
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 (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 after determining that the applicant had failed to establish that he: (1) had continuously resided in the United States since February 13, 2001; and (2) was eligible for late initial registration.

On appeal, counsel submits a brief and evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 has established his continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The record shows that the applicant filed his TPS application on April 27, 2004. Furnished with his application are documents establishing his continuous residence in the United States since September 5, 2003, and continuous physical presence from September 5, 2003, to the date of filing the application.

The Form I-213, Record of Deportable/Inadmissible Alien, shows that on September 5, 2003, the applicant was encountered by the Border Patrol after having entered the United States without inspection, 8 miles east of the Los Ebanos, Texas, Port of Entry. At that time, he stated that he resided in El Salvador with his mother, and that his cousin, who resides in Los Angeles, California, helped him with the costs endured while traveling from El Salvador. He was subsequently released to his father, [REDACTED]

The director noted that the applicant entered the United States on September 5, 2003, and determined that he had failed to establish continuous residence since February 13, 2001, pursuant to section 244(c)(1)(A)(ii) of the Act. Accordingly, the director denied the application on July 29, 2004.

On appeal, counsel states that the statute and regulations at 8 C.F.R. § 244.2(f)(2), properly read in the case of a child of a TPS recipient, qualify the applicant for TPS, and that the most recent designation of 8 C.F.R. § 244.2(f) as well as the designation called for in 8 C.F.R. § 244.2(b) and (c) establishes a date of September 9, 2003 for

continuous presence and residency for spouses and children referred to in 8 C.F.R. § 244.2(f). Addressing family unity, counsel states that the applicant's father has a constitutional liberty in maintaining care, custody and control of the applicant in his home and thus maintaining his stated desire of having the applicant remain in the United States with him in the home he maintains for the applicant and for the applicant's mother, his wife.

The statute provided in section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; (ii) the alien has continuously resided in the United States since such date as the Attorney General [now, the Secretary of the Department of Homeland Security] may designate.

The most recent, and only, date of the designation for El Salvadorans was March 9, 2001. Further, as stipulated in section 244(c), above, the Attorney General designated the dates required to establish continuous residence and continuous physical presence as February 13, 2001, and March 9, 2001, respectively. The applicant, in this case, was not present in the United States during the requisite period required to establish continuous residence and continuous physical presence. Counsel's assertion that the applicant qualifies for TPS since arriving in September 5, 2003, based on the late re-registration time period that closed on September 15, 2003, is not persuasive. The extension of the TPS designation until September 9, 2003, is not a new designation but, rather, an extension of the designation.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 8 C.F.R. §§ 244.2(a) and (b). Consequently, the director's decision to deny the application on this ground will be affirmed.

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

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on April 27, 2004.

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).

The director noted that the applicant was not residing in the United States during the requisite period based on the applicant's entry into the United States on September 5, 2003. The director, therefore, determined that the applicant was ineligible for TPS and denied the application on July 29, 2004.

Counsel asserts that the language clearly states that a late initial applicant must have been a spouse or child at the time of the initial registration period beginning with the initial March 9, 2001 designation. He argues that under a reasonable reading of the statute and regulations, the Secretary's determination in the federal notice (68 Fed. Reg. 136 (July 16, 2003)), constitutes "the most recent designation" of 8 C.F.R. § 244.2(f) as well as the designation called for in 8 C.F.R. § 244.2(b) and (c) and establishes a date of September 9, 2003 for continuous presence and residency for spouses and children referred to in (f). Counsel states that this construction is consistent with the intent of the law, the findings the Secretary made about the humanitarian need to protect people from El Salvador, and the principle of family unity, as expressed generally in immigration law and as expressed in 8 C.F.R. § 244.2(f)(2)(iv).

The regulation at 8 C.F.R. § 244.2(f)(2)(iv) simply allows spouses or children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, this regulation does not relax any of the other requirements for eligibility for TPS. According to 8 C.F.R. § 244.2, an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all of the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2), which includes (iv), in the applicant's case. Additionally, the *Federal Register*, 68 Fed. Reg. 136 (July 16, 2003), cited by counsel, states, in part, with emphasis added:

Does This Extension Allow Nationals of El Salvador (or Aliens Having No Nationality Who Last Habitually Resided in El Salvador) Who Entered the United States After February 13, 2001, to File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of El Salvador under -----the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) must have resided continuously in the United States since February 13, 2001, and have been continuously physically present in the United States since March 9, 2001.

Who Is Eligible for Late Initial Registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

- (1) Be a national of El Salvador (or alien who has no nationality and who last habitually resided in El Salvador);
- (2) Have been continuously physically present in the United States since March 9, 2001;
- (3) Have continuously resided in the United States since February 13, 2001; and
- (4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from March 9, 2001, through September 9, 2002, he or she:

- (1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;
- (2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;
- (3) Was a parolee or had a pending request for reparole; or
- (4) Was the spouse or child of an alien currently eligible to be a TPS registrant

To establish that the applicant was eligible for late registration because he is the child of an alien granted TPS pursuant to 8 C.F.R. § 244.2(f)(2)(iv), counsel submitted a copy of Form I-797C, Notice of Action, indicating

that [REDACTED] was granted TPS on January 26, 2002. However, there is no evidence in the record to establish that [REDACTED] is, in fact, the applicant's father, as claimed. The applicant's El Salvadoran birth certificate lists his mother as [REDACTED]. The certificate shows that the information regarding the birth of the applicant was given by [REDACTED] who "declared to be the grandfather of the new born." The name of the applicant's father is not listed on the certificate. Additionally, the record of proceeding contains no marriage certificate to establish that [REDACTED] and the applicant's mother are married. Section 101(b) of the Act.

The applicant has failed to establish that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Counsel's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for family unity or humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

It is noted that on April 27, 2005, the applicant filed a Motion to Reopen/Reconsider the applicant's case. This was based on the director's March 4, 2005, letter advising the applicant that his case was denied on July 29, 2004, and that a notice was sent to him, stating that if he wished further consideration of the director's decision, he could submit a motion in letter form. The record shows that an appeal was pending with the AAO at that time; therefore, a motion to reopen could not have been heard at that time.

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.