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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FEB 10 2005

FILE: [REDACTED]
[SRC 03 257 54803]

Office: TEXAS SERVICE CENTER Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 applying for 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director also found that the applicant had failed to submit photo identification.

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 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 September 15, 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 initial 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 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 initial registration. 8 C.F.R. § 244.2(g).

On December 22, 2003, 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 continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification, such as a driver's license or a national identity document from his country of origin bearing a photograph and/or fingerprint. In response, the applicant submitted photocopies of: the biographic pages of his El Salvadoran passport issued on October 27, 2003, by the Consulate General, Miami, Florida; his State of Florida Identification Card issued on November 4, 2003; and, various letters and documents relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 17, 2004.

On appeal, the applicant states that he is sending more evidence that he lived in the United States between March 9, 2001 and September 9, 2002, and submits documents relating to his residence and physical presence in the United States.

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 his Form I-821, Application for Temporary Protected Status, within the initial registration period that for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 decision to deny the application for temporary protected status will be affirmed.

The second issue in this proceeding is whether the applicant has established 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 December 22, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

1. The biographic pages of his El Salvadoran passport issued on October 27, 2003, by the Consulate General, Miami, Florida;
2. His State of Florida Identification Card issued on November 4, 2003;
3. Copies of money order receipts payable to CIS;

4. A letter dated January 26, 2004, from [REDACTED] Accountant, of [REDACTED] Naples, Florida, stating that the applicant's United States Citizen brother has been supporting the applicant, and stating that the brother can offer full time employment to the applicant when the applicant obtains employment authorization;
5. A letter dated January 18, 2004, from [REDACTED] Naples, Florida, stating that the applicant has attended church weekly since 2003;
6. A letter dated January 19, 2004, from the youth pastor of [REDACTED] Naples, Florida, stating that he has known the applicant for "about six months;"
7. A personal letter from a church member on behalf of the applicant; and,
8. A letter dated January 15, 2004, from [REDACTED] coordinator, Adult & Community Education, District School Board of [REDACTED] stating that the applicant has been pursuing English language classes since November 13, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 17, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. A letter dated March 10, 2004, from the Property Manager of [REDACTED] Apartments, Naples, Florida, stating that the applicant lived [REDACTED] since September 1, 2001;
2. An outpatient statement dated January 10, 2002, from NCH Healthcare System, Naples Community Hospital, Naples, Florida; and,
3. Two uncanceled payroll checks from [REDACTED] Naples, Florida, dated January 8, 2001, and February 5, 2001.

The applicant has not provided sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. It is noted that some of the evidence appears to have been altered, and/or is inconsistent with other documentation. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the applicant has not established that he has met the provisions of 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

The director's letter also indicated that the applicant had not submitted photo identification or a national identity document from his country of origin bearing a photograph and/or fingerprint. As noted above, the applicant submitted both an El Salvadoran passport and a State of Florida identification card. He has, therefore, overcome this reason 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.