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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 01 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.

A handwritten signature in black ink, appearing to read "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 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 qualifying continuous residence in the United States during the requisite period.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 parole; 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. A subsequent extension of the TPS designation has been granted 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 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 is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 12, 2003.

The record of proceedings confirms that the applicant filed his 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 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 he 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 December 3, 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 qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation 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 March 19, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant has failed to submit sufficient evidence demonstrating that during the initial registration period from March 9, 2001, to September 9, 2002, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal, or was the spouse or child of an alien currently eligible to be a TPS registrant.

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 Application for Temporary Protected Status within the initial registration period. 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 his continuous residence in the United States since February 13, 2001.

As stated above, the applicant was requested on December 3, 2003 to submit evidence establishing his qualifying continuous residence in the United States. The applicant, in response, provided the following documentation:

1. An affidavit from [REDACTED] in which he stated that he personally knew that the applicant has been residing at [REDACTED] since June of 1993; and,
2. An affidavit from [REDACTED] in which he stated that he personally knew that the applicant resided at [REDACTED] since 1993; and that the applicant is currently employed by the affiant in New York, New York.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 19, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

3. An affidavit from [REDACTED] in which she states that she has personally known [REDACTED] since 1993, that [REDACTED] currently resides [REDACTED] and requests that CIS consider this a letter as proof of [REDACTED] residency in the United States.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, and his physical presence in the United States since March 9, 2001. The affiant [REDACTED] does not attest to the residency or physical presence of the applicant, but rather the presence of the applicant's wife, [REDACTED] in the United States. There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States beginning in June of 1993. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiants have not demonstrated that their knowledge of the applicant's entry into the United States is independent of their personal relationship with the applicant. If this knowledge is based primarily on what the applicant told them about his entry into the United States, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

Although the affiants state that they have personal knowledge of the applicant residing at [REDACTED] since 1993, there has been no corroborative evidence submitted to substantiate their claims. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has failed to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the Record of Proceedings contains an outstanding Warrant of Deportation issued against the applicant in New York District on July 10, 1995.

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.