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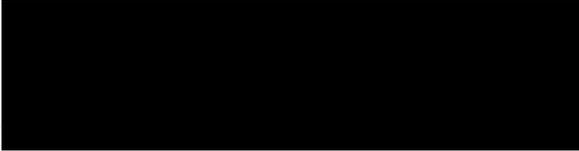
U.S. Department of Homeland Security
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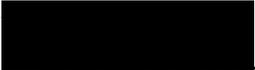
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 08 2005

[EAC 03 074 53356]

IN RE:

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, 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 because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel for the applicant submits a letter and additional documentation.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on September 13, 2002.¹

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).

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).

In support of his initial TPS application, the applicant submitted documentation including:

1. Earnings statements issued to the applicant by Marders The Landscape Store, Inc., Bridgehampton, New York, for the pay periods ending on January 16, 2000; March 5, 2000; March 26, 2000; July 9, 2000; and, July 16, 2000. The statements show the applicant's social security number as [REDACTED]
2. A 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the applicant by Marders The Landscape Store, Inc., Bridgehampton, New York. The W-2 shows the applicant's social security number [REDACTED] and,
3. A 2001 IRS Form W-2 issued to the applicant by [REDACTED], Manorville, New York, showing the applicant's social security number as [REDACTED]

On March 6, 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 to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided documentation including:

¹ The director's denial erroneously states that that the applicant's Form I-821 was filed on September 11, 2002, while the record reflects that it was filed on September 13, 2002.

4. Earnings statements issued to the applicant by Marders The Landscape Store, Inc., Bridgehampton, New York, for the pay periods ending on June 30, 2002; June 23, 2002; July 14, 2002; July 21, 2002; and, September 9, 2002. These statements show the applicant's social security number as [REDACTED]
5. A 2002 IRS Form W-2 issued to the applicant by Marders The Landscape Store, Inc., Bridgehampton, New York. This W-2 shows the applicant's social security number as [REDACTED]

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on May 14, 2003.

On appeal, counsel for the applicant states that the applicant was previously the victim of the inexperienced assistance of a notary public (*notario*) named [REDACTED] that the applicant's TPS application was filed after the initial registration period had expired due to circumstances beyond his (the applicant's) control. In support of the appeal, counsel submits the following additional documentation:

6. An affidavit from the applicant, dated June 10, 2003, stating that he believed he had filed his TPS application before the initial registration period had expired, but that the notary public he had engaged to file the application sent it in late;
7. A photocopy of a postal money order customer's receipt from the applicant payable to INS dated September 5, 2002; and,
8. A partial photocopy of a 1999 IRS Form W-2 issued to the applicant.

On appeal, counsel and the applicant attempt to excuse the applicant's having filed his initial TPS application after the initial registration period had expired due to the alleged inexperienced assistance of a notary public. However, the applicant's signature on the Form I-821 is dated September 12, 2002, and the applicant has not submitted any documentation regarding his communications with the notary and/or or INS/CIS prior to that date. Furthermore, there is no documentation contained in the record that the applicant ever filed a complaint against the notary public, or communicated his concerns to CIS previously regarding the issue of his application having been received after the initial registration period had expired.

Based on a review of the record, it is concluded that 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.

It is noted that there are discrepancies encountered in the evidence presented pertaining to the applicant's claim of qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. On his initial Form I-821, the applicant indicated that he had never used a social security number. However, he has submitted documentation in support of his application indicating that he used social security number [REDACTED] 2000 and 2001 (Nos. 1 and 2, above); social security numbers [REDACTED] in 2001 (No. 3); and social security number [REDACTED] 2002 (Nos. 4 and 5). These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988). Based on the above discussion, it is further concluded that the applicant has not submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application may also not be approved for these reasons.

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.