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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JUN 24 2005

[LIN 03 249 50026]

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:

[REDACTED]

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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 and continuous physical presence in the United States during the requisite time periods.

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on June 14, 2001 (LIN 01 202 53554 relates). The director denied the application November 6, 2001. The applicant did not file an appeal of the director's denial decision.

The applicant filed a second Form I-821 on September 3, 2002 (LIN 02 278 50053 relates). The director denied this second application on January 17, 2003. The applicant also did not file an appeal this decision.

The applicant filed the instant third application for TPS on August 18, 2003.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first and second Forms I-821 were denied, the instant application cannot be considered as an application for annual re-registration. The instant application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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.

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.

On March 9, 2001, the Attorney General designated El Salvador (66 Federal Register 14214) for Temporary Protected Status (TPS). On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

In connection with the instant application, the applicant was requested, on September 17, 2003, 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.

The record reflects that, in support of the instant application, as well as in support of his previous applications, the applicant submitted the following documentation:

1. An extract of his El Salvadoran birth certificate, with English translation;

2. A photocopy of the identification page from his El Salvadoran passport, issued on August 1, 2003 in Los Angeles, California;
3. A photocopy of a transcript from the [REDACTED] Aspen, Colorado, indicating that the applicant was an 11th grade student for the semesters beginning in January and June 2000, and a 10th grade student for the semester beginning in January 2001. The transcript notes that the applicant's "enter date" at the school was September 29, 1999, and his "leave date" was May 23, 2001;
4. A letter, dated April 17, 2001, from [REDACTED] Aspen, Colorado, stating that the applicant had been enrolled as a full-time student since September 29, 1999;
5. A photocopy of a letter, dated August 30, 2002, from [REDACTED], stating that the applicant entered the school in August 1999;
6. A letter, dated September 25, 2003, from [REDACTED] stating that the applicant had attended the school from 1999 to 2001; and,
7. A notarized letter from [REDACTED] stating that the applicant had lived in his home from January 1999 to October 1, 2003.

The director determined that the applicant had failed to establish that he was eligible for TPS and denied the application on November 13, 2003.

On appeal, counsel for the applicant states that the applicant "asserts that he has submitted proofs sufficient to establish that he was not out of the U.S. prior and after Feb. 2001." In support of the appeal, counsel submits the following additional documentation:

8. Photocopies of rent receipts dated, January 2000 to November 2003.

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

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. The applicant has not, however, 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 this reason 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, to the date of filing his application.

The applicant claims to have lived in the United States since April 1999. It is reasonable to expect that he would have a variety of corroborative evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods.

Based on the information and documentation provided by the applicant, he entered the United States at the age of sixteen. At the age of seventeen, he entered the 11th grade at [REDACTED] for two semesters. He subsequently, at the age of eighteen, was a 10th grade student for one semester. Meanwhile, he was paying rent at

a rate of \$150 per month. There is no evidence contained in the record as to how the applicant supported himself or how he was able to pay rent while attending high school.

It is concluded that the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. He has, therefore, 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 temporary protected status for these reasons, as well, will be affirmed.

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.