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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **MAR 30 2005**

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:

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.


for 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 he was eligible for late registration.

On appeal, the applicant asserts his eligibility for TPS and submits additional evidence in support of his claim.

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 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.

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 September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on July 28, 2003.

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 record of proceedings confirms that the applicant filed his application on July 28, 2003, after the initial registration period from March 9, 2001 through September 9, 2002, 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 August 27, 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 in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant provided some evidence of his qualifying continuous residence and continuous physical presence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 5, 2004. The director noted in her decision that the applicant had established his continuous residence in the United States since as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application.

On appeal, the applicant states that he entered the United States without formal inspection on or about November 1, 1998. He further states that for several reasons, and because he was ill advised, he did not submit his application for TPS on time. In addition, along with his appeal, the applicant provides the following documentation: a copy of a letter dated September 21, 2003, from [REDACTED] of the [REDACTED] church in Cockeysville, Maryland, who stated that he has known the applicant since January 2000, and that he is an active member in his church; a copy of an employment letter dated September 1, 2003, from CEI Construction indicating that the applicant had been an employee since December 20, 2000; copies of several Western Union money order receipts bearing the name of [REDACTED]; a copy of a billing statement dated June 25, 2001, from Viterra Energy Services, bearing the name of [REDACTED]; a copy of a hand-written receipt dated October 23, 2001, from Robert Express in Wheaton, Maryland; a copy of a billing statement dated December 16, 1999, from the University of Maryland Diagnostic Imaging Specialists, PA, reflecting the name of [REDACTED]; a copy of an earnings statement dated September 1, 2000, from [REDACTED] Seafood Restaurant, Inc, bearing the name of [REDACTED]. It is noted that the applicant had previously provided this evidence in response to the director's August 27, 2003 request for evidence.

The applicant, on appeal, submits 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.

While the director stated in her decision that the applicant had established continuous residence in the United States since as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application, the director erred in her conclusion.

A review of the record of proceedings reflects the applicant provided evidence, on appeal and in response to the director's August 27, 2003 request, bearing the name of [REDACTED], [REDACTED], and [REDACTED]. Also, the Western Union money order receipts reflect the name "[REDACTED]" It is noted that along with his TPS application, the applicant had provided copies of his El Salvadoran government issued birth certificate bearing the name [REDACTED]. The applicant has not submitted credible evidence to establish the legal use of the alias [REDACTED] or [REDACTED]. As such, evidence provided by the applicant under the name of "[REDACTED]" or "[REDACTED]" cannot be considered in these proceedings. Evidence of the use of two names may include official court documents registered with the proper civil authorities. Further, it is also noted that the applicant did not claim the use of [REDACTED] on his applications for temporary protected status or employment authorization.

The letter from Pastor [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church or during their acquaintance. The employment letter from CEI Construction has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). The letter is not notarized or in affidavit form. The Western Union money order receipts predate the requisite time periods for El Salvador TPS. It is also noted that these money order receipts bear the name of "[REDACTED]". The applicant claims to have lived in the United States since November 1, 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these statements and his qualifying continuous residence and continuous physical presence in the United States, such as earnings statements or check-stubs from his employment. The burden is on the applicant to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

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.