



U.S. Citizenship
and Immigration
Services

INVESTIGATION OF POTENTIAL ABUSE

PHOTOCOPY

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MAY 27 2006

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 04 008 53026]

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 initial registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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 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 § 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 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 September 26, 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 first issue in this proceeding is whether the applicant is eligible for late registration.

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).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 28, 2004.

On appeal, the applicant has not submitted a statement or any additional evidence to establish his eligibility for late initial registration.

The record contains a letter dated September 11, 2003, from [REDACTED] CIS registration number A95 135 210, stating that she would like to add her son to her application for TPS so he can obtain work authorization. The record contains a Form I-797C notice acknowledging receipt of a Form I-765, Application for Employment Authorization, filed by [REDACTED] on August 8, 2003. The form indicates that [REDACTED] has been granted TPS; however, the applicant has not provided any evidence to establish that [REDACTED] is his mother. The applicant has not provided any evidence that he has met any of the other requirements for late initial registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's determination that the applicant has not established his eligibility for late initial registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant did not provide any evidence in an attempt to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001 with his Form I-821, Application for Temporary Protected Status.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods and denied the application.

On appeal, the applicant submits the following:

- (1) a cash receipt dated August 13, 2000, from Circuit City in Santa Ana, California;
- (2) a cash receipt dated March 11, 2001, from Circuit City in Santa Ana, California;
- (3) a cash receipt dated June 4, 2002; from Sears in Costa Mesa, California;
- (4) a cash receipt dated June 15, 2002, from Best Buy in Westminster, California;
- (5) a cash receipt dated May 26, 2002, from Best Buy in Riverside, California;

- (6) photocopies of ADP pay statements purportedly reflecting work performed by [REDACTED] Social Security Number [REDACTED] in Santa Ana, California, during the following pay periods: December 23, 2001 to January 5, 2002; February 17 to March 2, 2002; May 12 to May 25, 2002; August 18 to August 31, 2002;
- (7) photocopies of LaserOne pay statements purportedly reflecting worked performed by "Lomeli Lara, Social Security Number [REDACTED] for [REDACTED] in Santa Ana, California, during the following pay periods: November 28 to December 4, 1999; June 25 to July 1, 2000; July 23 to August 5, 2000; April 1 to April 15, 2001; April 29 to May 12, 2001; October 1 to October 14, 2000; July 22 to August 4, 2001; August 19 to September 1, 2001; September 2 to September 15, 2001; October 14 to October 27, 2001; and, November 11 to November 24, 2001.

The applicant indicated on the Form I-821, Application for Temporary Protected Status, that he is single, but the ADP pay statements submitted on appeal indicate that the applicant is married and claimed three exemptions for federal and California State income tax purposes. The applicant has not provided any explanation for this discrepancy. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

In view of the foregoing, it is concluded that the applicant has failed to submit sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as set forth at 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Beyond the decision of the director, the applicant has not provided evidence to establish his identity and nationality. Therefore, the application also must be denied 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.