



U.S. Citizenship
and Immigration
Services

*related to
immigration
status*

FILE NO. 03 273 51631

MI



FILE: [REDACTED]
[LIN 03 273 51631]

Office: Nebraska Service Center

Date: *NOV 02 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant had failed to establish his eligibility for late TPS registration.

The record reveals that the applicant filed an initial application [LIN 01 251 52627] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 28, 2001. That application was denied for abandonment on February 27, 2002. The applicant did not file a motion to reopen within the requisite time period.

The applicant attempted to file another Form I-821, Application for Temporary Protected Status, [LIN 01 251 52627]; however, this application was rejected on August 30, 2002.

The applicant submitted a subsequent Form I-821, Application for Temporary Protected Status, [LIN 03 012 51256] which was properly filed on October 17, 2002. The director denied the application on March 4, 2003. The applicant filed a motion to reopen the application which was denied by the director on June 18, 2003.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on September 16, 2003. The director denied this application [LIN 03 273 51631] on February 24, 2004, because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The applicant filed an appeal to the director's decision on this application, which is now before the AAO.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the instant Form I-821 on September 16, 2003. Since the initial application was denied on February 27, 2002, the subsequent application cannot be considered as a re-registration. Therefore, the instant application can only be considered as a late registration.

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 September 16, 2003, after the initial registration period had closed.

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).

On December 23, 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 a copy of his birth certificate or passport. In addition, the applicant was requested to submit evidence establishing his entry to the United States prior to February 13, 2001; his continuous residence in the United States since February 13, 2001; and his continuous physical presence in the United States from March 9, 2001. In response, the applicant submitted copies of the biographical pages of his El Salvadoran passport, his Employment Authorization cards, his Social Security card, and his Ohio State Driver License. In addition, the applicant submitted evidence in an attempt to establish his date of entry, and continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on February 27, 2004, because the applicant failed to establish his eligibility for TPS late registration. The director noted in his decision that the immediate application was not filed within the 60-day period immediately following the expiration or termination of relief from removal. In addition, the director stated that the applicant had established that his date of entry, continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant provides the following documentation: a copy of a money order dated June 24, 1996; a copy of a letter dated September 1, 1996, from Delta Lula Community Service Center; a copy of a receipt for his Social Security card dated May 11, 2001; a copy of his license from the Ohio Division of Wildlife dated February 28, 2002; a copy of his Fingerprint Notification dated August 30, 2000; copies of receipt notices from the Service dated January 30, 2001, August 28, 2001, and October 17, 2002; a copy of a request for evidence notice dated March 1, 2001, from the Nebraska Service Center; a copy of his Notice to Appear from the Service dated May 9, 2001; a copy of a Referral Notice from the Service dated May 9, 2001; a copy of his notice of hearing in removal proceedings dated May 17, 2001; and copies of his Ohio State Driver License and Employment Authorization card bearing an eligibility category of "C19."

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. 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, 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).

While Bureau regulations allow aliens with pending asylum applications to apply for TPS after the initial registration period, the regulations require that a late registration be filed within a 60-day period immediately following the denial of the application for asylum and the dismissal of any subsequent appeal. 8 C.F.R. § 244.2(g). In this case, the application for TPS was filed on September 16, 2003; more than 60-days after the asylum case was administratively closed on March 25, 2002. The applicant has not established 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.