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U.S. Citizenship  
and Immigration  
Services

MI

FILE:

[REDACTED]  
[LIN 03 274 52271]

Office: NEBRASKA SERVICE CENTER

Date: **NOV 03 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 (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. The director also determined 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, the applicant submits a brief statement and additional documentation.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on July 9, 2001, during the initial registration period (LIN 01 215 52754 relates). The director denied the applicant's first TPS application on March 6, 2002, for failure to respond to the request for evidence. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the instant Form I-821 on September 15, 2003. The director denied this application 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 director also determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

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 Form I-821 application was denied on March 6, 2002, the instant application cannot be considered as an application for annual re-registration. The instant Form I-821 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 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.

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.

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. As previously indicated, the applicant filed the instant Form I-821 on September 15, 2003, more than one year after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On November 20, 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 photocopy of his birth certificate, a photo-identification document, and evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of his El Salvadoran identification card (*cédula*);
3. Photocopies of documentation indicating that the applicant traveled from Minneapolis, Minnesota, to Seattle, Washington, on January 14, 2001;
4. Photocopies of receipts, dated January through March 2002;
5. A photocopy of a letter, dated December 24, 2000, indicating that the applicant received an active arrest warrant in Ramsey County, Minnesota, for not having a valid driver's license, failure to yield, and no proof of insurance;
6. Photocopies of earnings statements from Famous Dave's of America, [REDACTED] Minnesota, dated August 25, 2000, and September 8, 2000;
7. A photocopy of an earnings statement from Dakota Contracting, Inc., dated October 6, 2001; and,
8. A photocopy of an earnings statement from T&R Construction, for the pay period ending March 28, 2001.

The director determined that the applicant had failed to establish that he was eligible for late registration. The director also determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on February 12, 2004.

On appeal, the applicant submits the following additional documentation:

9. A document, dated November 29, 2003, indicating that the applicant's driver's license was revoked on November 27, 2002;
10. A customer invoice, dated June 6, 2002, from Firestone Tire and Service Centers, Kent, Washington;
11. A T-Mobile phone bill for October to November 2002;
12. A photocopy of an earnings statement from B&H Drywall, Inc., Woodinville, Washington, dated July 12, 2002;
13. A photocopy of an earnings statement from M.L. Denton Co., dated May 22, 2002; and,
14. A photocopy of an earnings statement from T&R Construction, for the pay period ending on January 23, 2002.

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

Although the applicant has submitted documentation in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, he 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 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 since March 9, 2001.

The applicant claims to have lived in the United States continuously from September 1998 to September 1993. It is reasonable to expect that he would have a variety of evidence to support this claim. Although Nos. 3 and 5, above indicate that the applicant was physically present in the United States in December 2000 and January 2001, Nos. 4, 9, 10, 11, and 12 are all dated on or after January 2002.

There are discrepancies encountered in the evidence presented pertaining to the applicant's earnings statements and use of a Social Security number. On his first Form I-821, the applicant indicated that he had never used a Social Security number. On the instant Form I-821, he indicated that he had used Social Security number [REDACTED]. However, No. 6, above, indicates that he used Social Security number [REDACTED] in August and September 2000; and Nos. 7 and 8 that he used Social Security number [REDACTED] in March and October 2001. These discrepancies 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 a review of the record, it is concluded that the applicant has not submitted sufficient credible 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). Consequently, the director's decision to deny the application for these reasons will also 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 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.