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FILE: [REDACTED]
[LIN 04 064 50114]

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 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. The director also denied the application because the applicant failed to establish that he entered the United States on or before February 13, 2001, and he failed to establish his continuous residence since February 13, 2001. The director also denied the application because the applicant failed to establish his continuous physical presence in the United States since March 9, 2001. In addition, the director denied the application because the applicant failed to provide a copy of his birth certificate or passport, and a copy of a current photo identification.

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

The record reveals that the applicant filed his initial application [LIN 03 010 50588] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 9, 2002. That application was denied on April 3, 2003, because the applicant failed to establish his date of entry into the United States as of February 13, 2001, his continuous residence in the United States since February 13, 2001, and his identity. The applicant did not file a motion to reopen this application during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 04 064 50114] on January 5, 2004. The director denied this second 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 denied the application because the applicant failed to establish his date of entry into the United States on or before February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director also determined that the applicant also failed to provide a copy of his birth certificate or passport and a copy of his current photo identification document.

The applicant's initial Form I-821 was properly filed on September 9, 2002. That initial application was denied by the director on April 3, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

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 a subsequent Form I-821 on January 5, 2004. Since the initial application was denied on April 3, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this 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 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 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 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 February 4, 2004, 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 current identity document. In addition, the applicant was requested to submit evidence to establish his date of

entry to the United States since February 13, 2001, his continuous residence in the United States since February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant was also requested to submit a copy of his birth certificate or passport and a copy of his current photo identification. The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish his eligibility for TPS and denied the application on May 5, 2004.

On appeal, the applicant states that he responded to the director's February 4, 2004, Notice of Intent to Deny, and that he is submitting the evidence again on appeal. The applicant provides the following documentation along with his appeal: copies of his El Salvadoran birth certificate along with an English translation; a copy of his Virginia State Identification Card issued on March 12, 2001; a copy of his Form I-94, Departure Record, that reflects the applicant was admitted to the United States on February 21, 2001; copies of his personal identification card (Cedula) from El Salvador; copies of Express Mail receipts dated January 3, 2004, February 17, 2004, and March 15, 2004; a copy of his English Proficiency Placement dated May 4, 2001; copies of his earnings statements from Nu-Era Sheet Metal Co., Inc. dated January 30, 2004 and May 28, 2004; copies of his earnings statements from Serta Restorkraft Mattress dated September 19, 2002, January 16, 2003 and August 14, 2003; copies of his earnings statements from Pattco, Inc. dated July 22, 2001, July 29, 2001, and June 2, 2002; copies of his earnings statements from KAN, Inc. dated April 11, 2001 and May 8, 2001; and copies of medical payment receipts dated October 12, 2002 and May 25, 2004.

The first issue concerns the applicant's identity. On appeal, the applicant provides copies of his El Salvadoran birth certificate and personal identification card issued in El Salvador. In addition, the applicant submits a copy of his Virginia photo identification card. As such, the applicant has provided sufficient photo identification.

The second 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. 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). A review of the record of proceedings reflects that 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 decision to deny the application for TPS late registration will be affirmed.

The third issue in this proceeding is whether the applicant has established his date of entry into the United States on or before February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits evidence which establishes his continuous physical presence in the United States since March 9, 2001, as described in 8 C.F.R. § 244.2(b). However, the applicant must also meet the continuous residence requirement criteria described in 8 C.F.R. § 244.2(c). A review of the record reflects that the applicant stated on his applications for employment authorization and temporary protected status that he

did not enter the United States until February 21, 2001. Additionally, the applicant on appeal submits a copy of his Form I-94, Record of Departure, showing he was admitted as a B-2, non-immigrant visitor for pleasure, on February 21, 2001, in Washington, DC. Therefore, the applicant could not have met the requirements that he had continuously resided in the United States since February 13, 2001. The applicant has, thereby, failed to establish that he has met the criterion described in 8 C.F.R. § 244.2(c). Accordingly, the director's decision to deny the application for this reason 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 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.