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FILE: [REDACTED]  
[EAC 04 058 50734]

Office: Vermont Service Center

Date: **NOV 04 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, 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. The director also denied the application because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

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 [EAC 02 113 52287] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 11, 2002. That application was denied on December 12, 2002, due to abandonment because the applicant failed to respond a request for additional evidence. The applicant filed a motion to reopen his application on January 4, 2003. The director dismissed the motion on April 14, 2003.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 9, 2003. The director denied this application [EAC 04 058 50734] on August 25, 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 director also denied the application because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on February 11, 2002. That initial application was denied by the director on December 12, 2002. 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 December 9, 2003. Since the initial application was denied on December 12, 2002, and his request for a motion to reopen was denied on April 14, 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.

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 May 11, 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). In addition, the applicant was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The applicant was also requested to submit evidence to establish that he is a national or citizen of El Salvador. In response, the applicant submitted copies of his birth certificate from El Salvador along with an English translation, a copy of his El Salvadoran personal identification card (Cedula), copies of the biographical pages of his passport issued to him in El Salvador on July 3, 2001, and some evidence in an attempt to establish his 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 denied the application on August 25, 2004. The director noted in her decision to deny the application that the submitted a copy of his passport indicating that it was issued in July 2001 in El Salvador.

On appeal, the applicant states that he has been in the United States since October 11, 2000. The applicant also claims that his passport was provided to him through a relative. The applicant also provides the following documentation along with his appeal:

1. A copy of the director's decision to deny his employment authorization dated August 25, 2004;
2. An affidavit dated September 15, 2004, from Mr. [REDACTED] who stated that the applicant has been living in the United States since October 11, 2000;

3. An affidavit dated September 15, 2004, from Mr. [REDACTED] who stated that the applicant has been living in the United States since October 11, 2000;
4. An affidavit dated September 15, 2004, from Mr. [REDACTED] who stated that the applicant has been living in the United States since October 11, 2000;
5. A copy of a notice of action from the Service dated September 27, 2003, and his rejected employment authorization application;
6. A copy of an Express Mail receipt dated June 9, 2004;
7. Copies of the applicant's birth certificate along with an English translation;
8. A copy of the applicant's El Salvadoran personal identification card;
9. A copy of an unsigned employment letter dated December 23, 2002, from Mr. [REDACTED] President of Seven Somerest, Inc. Delux Car Wash, who stated that the applicant is employed with his company;
10. A copy of a letter dated May 7, 2003, from Ms. [REDACTED] who stated that she has known the applicant for two years;
11. Copies of the applicant's earnings statements from Kenyon Building Maintenance, Corporation, bearing pay periods from November 16, 2002 to December 27, 2002;
12. A copy of a Western Union money transfer receipt dated September 1, 2000;
13. A copy of a Western Union money transfer receipt dated December 17, 2001;
14. A copy of a letter dated May 25, 2004, from [REDACTED] who stated that he worked with the applicant;
15. Copies of several money transfer receipts from Costamar dated between April 28, 2002 and August 10, 2003;
16. Copies of the applicant's Form W-2, Wage and Tax Statements, and Income Tax Returns for the years 2002 and 2003;
17. Copies of several receipts from [REDACTED] dated February 28, 2002 and October 16, 2002;
18. A copy of an affidavit dated May 24, 2004, from Ms. [REDACTED] who stated that the applicant has been living in the United States since October 11, 2000; and,
19. A copy of an affidavit dated May 24, 2004, from Mr. [REDACTED] who stated that the applicant has been living in the United States since October 11, 2000.

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

The record of proceedings confirms that the applicant filed the instant 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 second issue in this proceeding is whether the applicant has established his continuous residence and his continuous physical presence in the United States during the requisite time periods.

The statements provided by the affiants, as detailed in Nos. 2, 3, 18, and 19 above, regarding the applicant's claimed continuous residence and continuous physical presence in the United States since October 11, 2000, are not supported by corroborative evidence at beginning of the qualifying periods for continuous residence and continuous physical presence. A review of the documentation submitted by the applicant on appeal reflects that there is a gap in the evidence between February 13, 2001 and December 13, 2001, the date on the single Western Union money transfer receipt as detailed in No. 13 above. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The remaining evidence falls well after the beginning of the qualifying time periods for continuous residence and continuous physical presence.

It is also noted that the record contains a copy of a Western Union money transfer receipt dated September 1, 2000. However, the applicant claimed on his application for TPS that he did not arrive the United States until October 1, 2000. 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 application. Additionally, although the applicant attempts to explain the circumstances regarding the issuance of his passport in El Salvador; he has not provided any objective evidence to support or give credibility to his statements. It is incumbent upon 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies noted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy 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 temporary protected status on these grounds 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.