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Washington, DC 20529



U.S. Citizenship  
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Services

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Office: VERMONT SERVICE CENTER

Date: NOV 08 2005

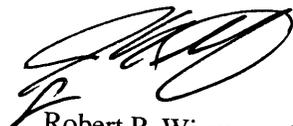
IN RE: Applicant: [Redacted]

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 (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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that he was eligible for late registration. The director also determined that the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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 did file an initial TPS application during the initial registration period. That application was submitted on March 19, 2001 and denied by the director on March 5, 2002 due to abandonment. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 16, 2003. The director denied this second application determining that the applicant had not submitted sufficient evidence to establish eligibility for TPS.

The applicant's initial Form I-821 was properly filed on March 19, 2001. The director denied that initial application on March 5, 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 16, 2003. Since the initial application was denied on March 5, 2002, 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 who is a national of a foreign state designated by the Attorney General 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 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. 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 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on December 16, 2003.

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 that 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).

On April 12, 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 evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on June 9, 2004.

On appeal, the applicant claims that he never received the Notice of Intent to Deny or the director's denial concerning his initial TPS application.

Contrary to the applicant's claim, the record of proceedings show that all correspondence was mailed to the applicant at his last known address. In addition, there is nothing in the record to show that the applicant informed CIS of any change of address prior to the time the request for evidence and the director's denial were sent.

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. 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 conclusion that the applicant had failed to establish his eligibility for late registration 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 in the United States since March 9, 2001.

The applicant initially submitted the following documentation as evidence of his eligibility:

1. A copy of a Western Union receipt dated January 8, 2001 and bearing the name [REDACTED] as the sender;
2. A copy of two pay stubs from WRC Enterprises, Inc. dated January 15, 1999 and January 22, 1999, and bearing the name [REDACTED] and,
3. A copy of an El Salvadoran birth certificate bearing the name [REDACTED]

As stated above, the applicant was requested on April 12, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

4. A copy of a U.S. Postal Service receipt stamp dated March 16, 2001 and bearing the name [REDACTED]
5. Copies of pay stubs dated October, November, and December of 2001 and bearing the name [REDACTED]
6. A handwritten letter from [REDACTED] in which he stated that the applicant has been employed at his landscaping business since March of 2001 as a grass cutter and planter; and,
7. A copy of his IRS Form 1040, U.S. Individual Income Tax Return for the year 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 9, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

8. A copy of a Personal Income Tax Computation Notice for the 2001 tax year bearing the name [REDACTED]
9. A copy of an IRS Form W-2, Wage and Tax Statement for 2001 from The Clark Construction Group, Inc. and bearing the name [REDACTED] as employee;
10. A copy of an IRS Form W-2, Wage and Tax Statement for 2001 from Amigo Movers, Inc. bearing the name Wence Coca as employee;
11. A letter from the Metropolitan Income Tax Service to Wence Coca concerning tax service fees for the 2001 tax year;
12. Copies of two receipt notices from Immigration and Naturalization Service with a receipt date of March 19, 2001 and bearing the applicant's name as [REDACTED]

13. A copy of a pay statement from The Clark Construction Group, Inc. dated December 26, 2001 and bearing the name [REDACTED] as employee;
14. A notarized letter from [REDACTED] of the Landscaping Services company in which he states that [REDACTED] has been employed by his company as a landscaper since March 7, 2001; and,
15. A copy of a business card from Landscaping Services company.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001. The employment affidavit from the Landscaping Services company has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of his business, or verify that the business was even located inside the United States.

There has been no corroborative evidence submitted to support the money order receipt. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the receipt; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The pay stubs from WRC Enterprises, Inc. (No. 2 above) list [REDACTED] as the employee and there has been no evidence submitted that indicates that [REDACTED] and [REDACTED] are one and the same person. The applicant's income tax documents submitted as Nos. 7 through 11 above, although derived from the 2001 tax year, do not indicate the applicant's specific dates of employment during that year.

All other documentation submitted is dated subsequent to February 13, 2001 and March 9, 2001, and therefore, cannot be used to demonstrate the applicant's presence in the United States during the requisite time periods. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the El Salvadoran birth certificate submitted by the applicant as proof of his nationality or citizenship indicates that [REDACTED] is a female rather than a male. This discrepancy brings into question the applicant's true nationality and/or citizenship. For this additional reason, the application will be denied.

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



**ORDER:** The appeal is dismissed.