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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 04 109 54692]

Office: VERMONT SERVICE CENTER

Date: NOV 16 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 found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits additional evidence.

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 application for TPS during the initial registration period. That application was denied on October 1, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant was informed that he could file an appeal within 30 days, but he failed to do so.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 1, 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 qualifying continuous residence and continuous physical presence in the United States during the requisite 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 September 7, 2002. That initial application was denied by the director on October 1, 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 March 1, 2004. Since the initial application was denied on October 1, 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 who is a national of a foreign state 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 § 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed the current Form I-821, Application for Temporary Protected Status, application with Citizenship and Immigration Services (CIS) on March 1, 2004.

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).

The first 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. 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.

On May 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 during the requisite periods. 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 she was eligible for late registration and denied the application on August 13, 2004.

On appeal, the applicant does not make a statement or provide any evidence to establish his eligibility for late initial registration.

The applicant submits evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following:

1. a letter dated February 26, 2004, from [REDACTED] stating that he has known the applicant for four years;
2. a letter from [REDACTED] stating that the applicant and his mother have rented housing from him for the last three years;
3. a letter from [REDACTED] stating that he has known the applicant and his family since May 2000, and that he works with the applicant's brother for Island Landscape in Nantucket, Massachusetts;
4. a photocopy of a certificate dated June 20, 2003, indicating that the applicant has made progress in his studies of English as a Second Language;
5. a completion certificate dated August 11, 2003, from Hurricane Island Outward Bound School indicating that the applicant completed a course entitled Day Backpack/Rocks;
6. a photocopy of a varsity soccer certificate dated December 8, 2003, from Nantucket High School, Nantucket, Massachusetts;
7. a photocopy of a diploma from Nantucket Public Schools, Nantucket, Massachusetts, indicating that the applicant had graduated from the eighth grade; and,
8. a certificate from the Nantucket Taekwon-Do Academy, Nantucket, Massachusetts, dated February 20, 2004.

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

9. a letter dated June 9, 2004, from the applicant's mother, [REDACTED] stating that the applicant has lived with her since he came to the United States in 2000;
10. a letter dated June 12, 2004, from [REDACTED] stating he has known the applicant since 2000;
11. a letter from [REDACTED] stating he has known the applicant since November 2003; and,
12. a photocopy of the applicant's progress report from Nantucket High School, Nantucket, Massachusetts, for the period from April 5, 2004 to May 17, 2004.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 13, 2004.

On appeal, the applicant submits:

13. a letter from [REDACTED] stating that he has personal knowledge that the applicant has been in the United States since 2001; and,
14. a letter dated September 3, 2004, from the applicant's mother [REDACTED] stating that the applicant has lived with her since he arrived in the United States in 2000.

The applicant has submitted only letters from his mother and from acquaintances (Nos. 1, 2, 3, 9, 10, 11, 13, and 14) to establish his qualifying continuous residence and continuous physical presence in the United States prior to June 2003. The applicant claims to have lived in the United States since 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these letters and affidavits; however, no such evidence has been submitted.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He has, therefore, 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 on these grounds 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.