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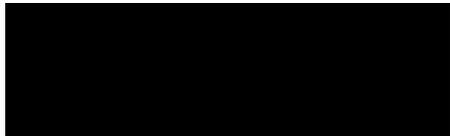
Date: NOV 21 2005

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant failed to provide proof of his identity and nationality and the requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant did respond to the notice requesting additional information and submits evidence to support this claim. The applicant also resubmitted the evidence provided in response to the notice.

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 on May 18, 2001. That application was denied on May 3, 2002, for failure to appear for fingerprinting. 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 denial. 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 August 14, 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. 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 May 18, 2001. That initial application was denied by the director on May 3, 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 August 14, 2003. Since the initial application was denied on May 3, 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 as 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.

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.

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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On August 13, 1999, the applicant was arrested by the Rockford Police Department for "Soliciting a Prostitute."

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension granted until September 9, 2006, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on August 14, 2003.

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 Citizenship and Immigration Services (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 record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On November 4, 2003, the applicant was provided the opportunity 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 identity and nationality and evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In addition, the applicant was requested to submit the final court disposition for the charge detailed above. The director determined that the applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant did respond to the notice. The applicant also submitted evidence that he did, in fact, respond to the notice, which was received at the Nebraska Service Center on November 28, 2003. The applicant also resubmits evidence provided in response to the notice in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period, but that evidence will be examined by this office. 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 failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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.

As stated above, the applicant was requested on November 4, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant failed to respond to the notice and denied the application.

On appeal, counsel for the applicant states that the applicant did provide additional evidence in response to the notice and provided evidence to substantiate this claim. The applicant resubmitted:

1. A copy of his passport, birth certificate, Salvadoran identification document, State of Illinois Identification Card, Social Security card, State of Illinois Certification of Marriage on December 8, 2003 and state of Illinois Certificate of Birth dated February 15, 2004.
2. A copy of an identity card from the Disease Control Service, Denver, Colorado, dated March 12, 1999 in the name of [REDACTED]
3. Copies of an UPS receipt dated December 15, 1999; a U.S. Postal Service registered mail receipt dated December 15, 2000, an U.S. Postal Service certified mail receipt dated September 26, 2002; Vigo money transfer receipts dated July 31, 2000, October 26, 2000, December 18, 2000, July 30, 2001, August 27, 2001, September 5, 2001, November 12, 2001, November 19, 2001, November 26, 2001, December 22, 2001, February 25, 2002, April 29, 2002, July 30, 2002, September 3, 2002, November 12, 2002, May 5, 2003, May 28, 2003, and July 15, 2003; a receipt from Professional Accounting & Tax Service, inc. dated February 18, 2003.
4. Copies of pay stubs from [REDACTED] dated every two weeks from June 28, 2000, to May 30, 2001, pay stubs from [REDACTED] Rockford, Illinois dated every two weeks from June 2, 2001 to March 9, 2002, pay stubs from [REDACTED] dated weekly from March 16, 2002 to September 28, 2002, pay stubs from [REDACTED] dated October 24, 2002 and October 31, 2002, pay stubs from Strategic Edge Solutions dated weekly from November 1, 2002 to June 6, 2003, and pay stubs from [REDACTED] Wellington, Ohio, dated every two weeks from June 13, 2003 to March 5, 2004.
5. Copies of 2000, 2001, and 2002 tax documents.
6. Copies of a Certificate of Recognition dated Spring 2001, a receipt from Crusaders Central Clinic Association dated June 25, 2003, a receipt from Hansen and Hansen D.D.S., Ltd. Dated August 5, 2003, an employee notification letter dated July 15, 2003.
7. Statements from [REDACTED]

8. Copies of monthly statements from SBC Ameritech dated June 16, 2002, January 3, 2003, February 7, 2003, March 7, 2003, March 11, 2003, March 28, 2003, May 16, 2003, Bank One checking account statements dated September 6, 2002; Members Alliance Credit Union dated April 9, 2003, July 9, 2003, October 9, 2003, November 9, 2003, Member Alliance Credit Union Transaction Receipts dated December 20, 2002 and December 27, 2002, June 6, 2003, July 11, 2003, July 25, 2003, August 22, 2003, October 3, 2003, October 31, 2003, February 5, 2004, and March 5, 2004, and, January 9, 2004 account statements from Nicor Gas dated January 28, 2004 and February 27, 2004.
9. Copies of a Form I-821, Application for Temporary Protected Status, a Form I-765, Application for Employment Authorization.
10. Copies of a lease dated May 2, 2002, store receipts dated August 10, 2002, August 17, 2002, August 24, 2002, August 31, 2002, September 6, 2002, September 21, 2002, September 29, 2002, October 6, 2002, December 7, 2002, February 15, 2003
11. Copies of a Patient Insurance tax receipt dated January 4, 2004, an Official Odometer (Mileage) statement dated September 6, 2003, a Temporary registration Plate dated September 9, 2003, a Buyer's Guide dated September 6, 2003, a Retail Installment contract dated September 6, 2003, a receipt from Lube Pros, Rockford, Illinois dated September 7, 2003, a receipt from Tri-County Auto Sales, Loves Park, Illinois, dated August 23, 2003, a State Farm Insurance Company Auto Renewal dated March 28, 2004.

The applicant has submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. He has, therefore, met the criteria 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 withdrawn.

The fourth and fifth issues in this proceeding are whether the applicant has established his identity and nationality and whether he has provided the requested court documentation.

On November 4, 2003, the applicant was requested to provide proof of his identity and nationality and to provide the final court disposition for each of the charges detailed above. The applicant submitted a copy of his birth certificate and passport, which established his nationality and his identity. However, the applicant failed to provide the final court disposition of his arrest. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The applicant has also failed to submit 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).

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.