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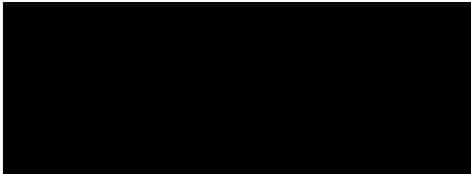


FILE: [REDACTED]
[EAC 04 072 51375]

Office: VERMONT SERVICE CENTER

Date: NOV 30 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: 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his claim of eligibility for TPS.

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.

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 July 2, 2003, due to abandonment. The applicant did not file either a motion or an appeal during the requisite timeframe. 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 January 12, 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. Since the applicant did properly file an application during the initial registration period, the director erred in her 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 August 16, 2001. The director denied the initial application on July 2, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision is 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 12, 2004. Since the initial application was denied on July 2, 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 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 January 12, 2004.

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 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 May 26, 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 August 2, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS.

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 along with his TPS application:

1. An affidavit from [REDACTED] in which she stated that she had met the applicant in March of 1998;
2. Copies of pay statements bearing the name [REDACTED] and dated June, July, September, October, and December of 1998, and January, February, and March of 1999; and,
3. A copy of a Lil Peach money order receipt dated July 28, 2001, and bearing the name [REDACTED] as the purchaser.

As stated above, the applicant was requested on May 26, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 2, 2004.

On August 6, 2004 the applicant submitted a response to the director's request for evidence and provided the following documentation:

4. Copies of rent receipts dated from January to December of 2001 and bearing the name of [REDACTED] as the renter;
5. An affidavit from [REDACTED] in which he stated that he has known the applicant since January of 2001 and that the applicant resides at [REDACTED] and,
6. An affidavit from [REDACTED] in which he stated that the applicant resided at [REDACTED] from January 1, 2001, to January of 2002 and paid \$500.00 per month in rent plus utilities.

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

7. An affidavit from [REDACTED] in which he states that the applicant resided at [REDACTED] from January of 2001 to January of 2002 and that the applicant is unable to produce a lease agreement or utility bills in his name because they were all in the affiant's name; and,
8. A copy of a Cambridge, Massachusetts, birth certificate in which it is stated that [REDACTED] was born June 20, 2002, and lists the applicant as the child's father.

The applicant also resubmitted copies of the rent receipts and the affidavit of [REDACTED]

The applicant has not submitted sufficient credible 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. There has been no corroborative evidence submitted to support the statements made by [REDACTED] regarding her acquaintence with the applicant since March of 1998. The applicant claims to have resided in the United States since January of 1997. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence and continuous physical presence in the United States as required by the regulations. Although [REDACTED] stated in his affidavit (No. 5 above) that the applicant has been present in the United States since January of 2001 and that the applicant has resided at [REDACTED] there has been no corroborating evidence submitted to substantiate those claims. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The applicant submitted a copy of a money order receipt as evidence (No. 3 above). There has been no corroborative evidence submitted to support the 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 and continuous physical presence in the United States. 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 rent receipts and residence affidavits received from the applicant (Nos. 4, 5, and 6 above) are not sufficient to demonstrate that he continuously resided and was continuously physically present in the United States from February 13, 2001 to January 12, 2004, when the applicant filed his TPS application. There has been no evidence submitted to demonstrate that [REDACTED] had legal authority to sublet a portion of his apartment to the applicant or to collect rent from the same. The pay statements submitted by the applicant (No. 2 above) are all dated 1998 and 1999, which is prior to the requisite time period. The record shows that the applicant's son was born in Cambridge, Massachusetts, on June 20, 2002; however, this does not establish that the applicant was present in the United States at that time.

The applicant failed to establish that he has met the continuous residence and continuous physical presence 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.

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

ORDER: The appeal is dismissed.