



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 30 2005**

[EAC 04 184 52512]

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, 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.

On appeal, counsel the applicant submits a brief and 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 under CIS receipt number EAC 01 238 56792. That application was denied on August 26, 2003, because the applicant failed to establish his eligibility for TPS. The applicant did not file an appeal from the denial decision.

The applicant filed a second TPS application on October 29, 2003, under CIS receipt number EAC 04 032 50240. The applicant indicated on this second Form I-821, Application for Temporary Protected Status, that he was applying for re-registration.

On April 20, 2004, the director denied the application after determining that the applicant had abandoned his application by failing to pay the required fingerprint fee of \$50. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a motion to reopen the matter within 30 days of the issuance date of the denial decision.

Rather than filing a motion to reopen the matter, the applicant filed the current TPS application on June 4, 2004. The applicant once again indicated on the Form I-821 that he was applying for re-registration.

The director denied this third application, in part, 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 this basis for denial. While the director found the applicant ineligible for TPS, in part, because he had failed to establish his 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 July 31, 2001. The director denied that initial application on August 26, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a final 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 the current Form I-821 on June 4, 2004. Since the initial application was denied on March 26, 2003, the applicant's second and third TPS applications **cannot be considered as re-registration applications**. Therefore, the current TPS application can only be considered as a late initial 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.

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 initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his current Form I-821 with Citizenship and Immigration Services (CIS) on June 4, 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 current TPS 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 July 28, 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 in the United States during the requisite period. Counsel for the applicant, in response, stated that the applicant filed his second TPS application without assistance of counsel, and received two confusing notices with the same date, one indicating that a \$50 fingerprint fee had been paid, and one a billing notice for \$50. Counsel did not, however, submit any evidence to establish the applicant's eligibility for late initial registration.

The director determined that the applicant had failed to establish he was eligible for late initial registration and denied the application on September 23, 2004.

On appeal, counsel for the applicant asserts that the applicant should be granted TPS “[b]ecause of the improper notice, and the confusing nature of the communications from INS and CIS.”

The applicant was granted an extension of his employment authorization on May 20, 2003, because his TPS application was still pending. The applicant’s initial Form I-821 was denied on August 26, 2003, because the applicant failed to establish his eligibility for TPS.

The applicant submitted a second application for extension of his employment authorization on September 2, 2003, but the application was rejected and returned to him on September 30, 2003, because his initial TPS application had been denied on August 26, 2003, and he was no longer eligible for extension of his employment authorization.

On October 8, 2003, the applicant attempted to file a second Form I-821, but the application was rejected and returned to him because he had not paid the required fees. The applicant was informed that he was required to pay a \$50 filing fee for initial or late initial registration, a \$50 fingerprint fee, and a \$120 filing fee for the Form I-765, if he was seeking employment authorization.

The second application was not properly filed with the correct filing fees until October 29, 2003. On November 17, 2003, a notice was sent to the applicant acknowledging receipt of his \$50 filing fee for the Form I-821. On the same date, a billing notice was sent to the applicant instructing him to pay the required \$50 fingerprint fee. The director stated in the notice that the applicant was required to pay the required fingerprint fee within 87 days.

On February 17, 2004, the applicant’s \$50 fingerprint fee was received at the Vermont Service Center, and a notice was sent to the applicant in care of counsel on February 19, 2004, acknowledging receipt of the fingerprint fee.

As previously stated, the director denied the application due to abandonment on April 20, 2004. The director informed the applicant that there is no appeal from a denial due to abandonment, but that the applicant could file a motion to reopen the matter within 30 days of the issuance date of the denial decision.

Counsel is correct in his statement that the applicant did not abandon his application by failing to pay the required \$50 fingerprint fee in connection with his second Form I-821 within the specified period of 87 days; however, counsel failed to file a motion to reopen the matter. Instead, the applicant, through counsel, filed a third Form I-821 on June 4, 2004, more than 33 days after the denial of the previous application and almost two years after the expiration of the initial registration period for Salvadorans.

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.

The applicant claimed on his Form I-821 that he entered the United States without inspection on December 10, 2000. In support of his initial Form I-821, the applicant submitted an affidavit dated July 18, 2001, from [REDACTED] stating that she has known the applicant since he came to the United States on December 10, 2000.

On July 28, 2004, the applicant was requested to submit additional evidence to establish his qualifying continuous residence in the United States during the requisite periods. In response, counsel for the applicant addressed the procedural history of the applicant's prior and current TPS applications, but he did not submit any additional evidence to establish the applicant's qualifying continuous residence in the United States.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United State since February 13, 2001, and denied the application.

On appeal, counsel for the applicant again addresses the procedural history and contends that the applicant should be granted TPS because of "improper notice" and "the confusing nature of the communications from INS and CIS." However, counsel has failed, once again, to submit any additional evidence to establish the applicant's qualifying continuous residence in the United States.

Without corroborative evidence, the affidavit from [REDACTED] is not sufficient to establish an applicant's qualifying continuous residence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not submitted any evidence to establish his continuous residence in the United States during the periods from February 13, 2001, to July 31, 2001, the filing date of his initial Form I-821. The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States throughout the requisite period. He has, therefore, failed to establish that he has met the requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

Beyond the decision of the director, the applicant has also failed to submit sufficient evidence to establish continuous physical presence in the United States during the requisite period as described at 8 C.F.R. § 244.2(b). Therefore, the application also must be denied for this reason.

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.