

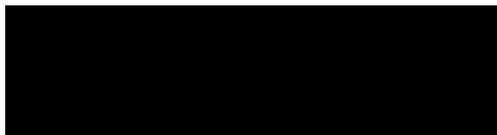
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



MI

FILE:



Office: Nebraska Service Center

Date: **OCT 03 2005**

[LIN 03 265 51410]

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.

for 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 denied the application because the applicant failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish that he entered the United States on or before February 13, 2001, and his continuous physical presence in the United States during the requisite time periods. In addition, the director denied the application because the applicant failed to provide a clear, legible copy of his current photo identity document.

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 filed his initial application [WAC 02 130 50317] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 4, 2002. That application was denied on August 14, 2003, due to abandonment because the applicant failed to respond a request for additional evidence. The applicant did not file a motion to reopen this application during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 03 265 51410] on September 9, 2003. 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 date of entry into the United States on or before February 13, 2001, and his continuous physical presence in the United States during the requisite periods. The director also determined that the applicant also failed to provide a clear, legible copy of his identity document.

The applicant's initial Form I-821 was properly filed on April 4, 2002. That initial application was denied by the director on August 14, 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 September 9, 2003. Since the initial application was denied on August 14, 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 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 § 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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).

On November 3, 2003, 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 a copy of his current identity document. In addition, the applicant was requested to submit evidence to establish his date of entry to the United States since February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted copies of his El Salvadoran birth certificate and his personal identification document along with English translations. The applicant also submitted some evidence in an attempt to establish his date of entry into the United States and continuous physical presence in the United States; however, he did not submit

any evidence to establish his eligibility for late registration. The director denied the application on January 30, 2004.

On appeal, the applicant states he was not aware that the Service had denied his initial TPS application which he filed on April 4, 2002. He also states that he did not receive the director's notice denying his TPS application. In addition, he states that he was not able to obtain current photo identification. Further, the applicant states that he could not submit evidence, such as rent receipts or utility statements, because the bills are under the name of his aunt. The applicant did not submit any evidence, on appeal, in support of his eligibility for TPS.

A review of the record of proceedings reflects that the director's notices were mailed to the applicant's last known address of [REDACTED], in Saint Paul, Minnesota. The first issue concerns the applicant's photo identification. In response to the director's November 3, 2003 request, the applicant provided a copy of his personal identification issued by an official magistrate in El Salvador on November 30, 1999. As such, the applicant has provided sufficient photo identification.

The second 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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). A review of the record of proceedings reflects that 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 decision to deny the application for TPS late registration will be affirmed.

The third issue in this proceeding is whether the applicant has established his date of entry into the United States on or before February 13, 2001, and his continuous physical presence in the United States during the requisite time periods.

The record of proceedings contains copies of earnings statements from Midwest Sanitation Co, Inc. dated February 22, 2001, March 30, 2001, April 20, 2001, May 11, 2001, June 29, 2001, July 13, 2001, August 24, 2001, and October 12, 2001. The photocopied earnings statements as stated above appear to have been altered as the original information on the earning statement seems to have been covered-over and the applicant's information has been inserted in its place. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Further, the applicant did not provide any corroborative evidence such as check payment receipts or income tax returns. It is noted that the address of the company is not indicated on the earnings statements. In addition, the record contains copies of Qwest billing statements; however, these billing statements bear the name of "[REDACTED]" and do not indicate an address. In addition, the record contains a letter dated November 20, 2003, from Mr. [REDACTED], who stated that the

applicant is his nephew and the applicant had lived with him since December 2000. The statements provided Mr. [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by credible corroborative evidence. Affidavits from relatives are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will 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.

ORDER: The appeal is dismissed.