



U.S. Citizenship
and Immigration
Services

M I

[REDACTED]

FILE: [REDACTED]
[LIN 03 271 51360]

Office: Nebraska Service Center

Date: OCT 18 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:

[REDACTED]

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 (AAO) 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 his date of entry to the United States and his continuous residence and continuous physical presence in the United States.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits evidence in an attempt to establish the applicant's eligibility for TPS

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 [LIN 02 238 52424] for TPS during the initial registration period. That application was denied on February 4, 2003, due to abandonment. The applicant, through counsel, filed a motion to reopen the application on March 3, 2003. The director dismissed the motion to reopen on April 8, 2003.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 19, 2003. The director denied this application [EAC 03 271 15360] on February 10, 2004, 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 director also denied the application because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant's initial Form I-821 was properly filed on August 19, 2002. That initial application was denied by the director on February 4, 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 19, 2003. Since the initial application was denied on February 4, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

The record reveals that the applicant filed a subsequent application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 19, 2003. The director denied this application on February 10, 2004. Counsel, on behalf of the applicant, filed an appeal to the director's decision on March 18, 2004. However, since the appeal was untimely filed, the director treated the appeal as a motion to reopen. The director dismissed the motion to reopen on April 28, 2004, after he concluded that the grounds of denial had not been overcome. On May 24, 2004, counsel filed an appeal from the director's decision which is now before the AAO.

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 designated by the Attorney General 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 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.

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. 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 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).

On October 22, 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 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. The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish his eligibility for TPS and denied the application on February 10, 2004.

On appeal, counsel states that the applicant entered the United States in 1999 and that the applicant qualifies for TPS late registration because he had a TPS application pending with the Service. Counsel also provides the following documentation along with his appeal: copies of the applicant's passport issued to him on March 29, 2001 in Chicago, Illinois; two hand-written letters dated February 16, 2000; a hand-written lease agreement dated October 15, 2000; a copy of the birth certificate of his son born on September 3, 2001; copies of cash register receipts dated September 15, 2003; a copy of a letter dated May 21, 2001, regarding the applicant's physical examination; a copy of an affidavit dated May 14, 2001, from [REDACTED] who stated that he has known the applicant since June 1999; a copy of a letter dated May 11, 2001, from [REDACTED] who stated that she has known the applicant since January 2001; a copy of a letter dated May 8, 2001, from [REDACTED] of the S.D.A. Hispanic Ministries in Minnesota, who stated that he has known the applicant since January 1999 and that the applicant has regularly attended services from that time; a letter dated October 6, 2002, from [REDACTED] who stated that the applicant has lived at [REDACTED] since July 10, 1999; a letter dated November 23, 2003, from [REDACTED] who stated that he had met the applicant in 2001; a letter dated January 3, 2004, from [REDACTED] who stated that that applicant arrived in the United States in May 1999; and various photographs of the applicant and his family and friends.

The first issue in this proceeding is whether the applicant is eligible for late registration.

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 appeal, counsel asserts that the applicant is eligible for TPS late registration because the applicant had a TPS application pending before the Service. However, a pending application for TPS is not an application for relief from removal. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. Counsel has not submitted any evidence to establish that the applicant 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 copies of the applicant's El Salvadoran passport reflect that it was issued in Chicago on March 29, 2001, which falls after the beginning of the requisite time periods for continuous residence and continuous presence in the United States. The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The copies of hand-written letters in Spanish do not contain the envelopes that may bear a postmark date or the address of the applicant. The affidavit from [REDACTED] does not indicate whether she has known the applicant in the United States since June 1999. In addition, the letter from [REDACTED] also does not indicate whether she has known the applicant in the United States since January 2001. The applicant has not submitted evidence any evidence of her continuous residence and continuous physical presence in the United States from February 13, 2001 to March 28, 2001. The letter from the applicant's landlord, [REDACTED] may indicate that the applicant has rented from him since 1999; however, [REDACTED] statements are not supported by credible corroborative evidence such as rent receipts. Moreover, the photocopied apartment lease between Mr. Stoffel and the applicant appears to have been altered as the original lease date and signature dates of "01" appear to have been altered and an earlier year of "00" has been inserted in their 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). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the lease agreement as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect

and it must be concluded that the applicant has failed to satisfy 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 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 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.