



U.S. Citizenship  
and Immigration  
Services

Identity by document  
pre- and post-arrival  
to ensure of arrival  
PUBLIC SAFETY

MI



FILE: [REDACTED]  
[EAC 04 009 51737]

Office: VERMONT SERVICE CENTER

Date: OCT 04 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: 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 (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 that he was eligible for late registration. The director also determined that the applicant had failed to submit evidence establishing his continuous residence in the United States since February 13, 2001.

On appeal, the applicant submits a statement. The applicant clarifies that he did, in fact, first apply for TPS during the initial registration period. The applicant requests 30 additional days to file documentation, indicating that he has retained an attorney. To date, however, no Form G-28, Notice of Entry of Appearance as Attorney or Representative of Record, or additional evidence, has been received into the record, and the record will be considered complete.

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 due to abandonment on June 27, 2003, after the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. 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 September 15, 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. Since the applicant did properly file an application during the initial registration period, the director did not fully explain the basis for the 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 July 17, 2001. That initial application was denied by the director on June 27, 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 this subsequent Form I-821 on September 15, 2003. Since the initial application was denied on June 27, 2003, this 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 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.

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. 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 validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on September 15, 2003.

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 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 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 late initial registration. 8 C.F.R. § 244.2(g).

On February 20, 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 since February 13, 2001. The applicant, in response, submitted a statement signed by both the applicant and [REDACTED], his fiancé, stating that the applicant followed the advise of the individual who assisted him with his initial application, using the address of that individual on his initial TPS application. When the applicant obtained a post office box, he did not inform CIS of his new address. When mail was no longer being delivered to the individual who had assisted him, the applicant did not receive the request for additional evidence and the decision on his original TPS application. The applicant also submitted: a letter from the President, [REDACTED], Jamesport, New York, stating that the applicant has been employed full-time since May 2001; numerous earnings statements dated in 2002 and 2003 from [REDACTED], Jamesport, New York; another copy of a letter dated March 9, 2001, stating that the applicant worked for [REDACTED] Mattituck, New York, from June 2000 through February 2001; his Employment Authorization document (EAD) indicating approval under Category C19, with validity from August 8, 2001 through September 9, 2002; a Fingerprint Receipt Notification dated July 26, 2001; and, a fingerprint worksheet completed on June 6, 2002 at Brooklyn, New York. The record also includes the applicant's birth certificate with English translation.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 7, 2004.

On appeal, the applicant states that he has never left the United States since his arrival here, and has submitted proof of employment for the past four years. He states that he received incorrect information from the attorney who advised him that extensions were automatic and that he only needed to have his fingerprints retaken. He also reiterates that he obtained a post office box and therefore never received the notices that were sent to him regarding his initial TPS application. The applicant does not submit any additional evidence in support of the appeal.

The applicant previously 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 Form I-821, Application for Temporary Protected Status, within the initial registration period. Because the applicant's initial TPS application is signed only by the applicant, and does not list the name of the individual who assisted him and whose address was allegedly being used, the assertions of the applicant cannot be independently verified. Applicants are required to notify CIS of any change of address within 10 days. As noted above, because his initial application was denied on June 27, 2003, this subsequent application cannot be considered as a re-registration, and can only be considered as a late registration. 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) and (g). Consequently, the director's decision to deny this application for temporary protected status 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.

As stated above, the applicant was requested on February 20, 2004, to submit evidence establishing his continuous residence in the United States. The applicant, in response, provided the documentation detailed above.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and denied the application on April 7, 2004.

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

In total, the record contains sufficient evidence to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and his 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 TPS on this ground has been overcome.

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.