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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 05 2005
[EAC 03 257 53051]

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, 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 his continuous physical presence in the United States from March 9, 2001 to September 12, 2003. The director found that the applicant had submitted sufficient evidence to establish his continuous residence in the United States and his eligibility for late registration.

On appeal, counsel asserts that the evidence of record, including the documentation submitted on appeal, is sufficient to establish the applicant's continuous physical presence in the United States during the requisite period. Counsel asserts the applicant's claim of eligibility for TPS.

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 record of proceedings shows that the applicant's initial TPS application was denied on November 9, 2001 for the applicant's failure to report for fingerprinting. There is no evidence in the record to show that the applicant either filed a motion to reopen or an appeal of the director's November 9, 2001 decision during the requisite timeframe. The applicant filed a second TPS application on September 12, 2003. Since the initial application was denied on November 9, 2001, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 September 12, 2003.

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 that 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 October 21, 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 qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his asylum application and hearing.

The director determined that the applicant had established that he was eligible for late registration.

Contrary to the director's decision on this issue, the AAO finds that the evidence submitted demonstrates that the applicant is not eligible for late registration. The applicant is claiming that he qualifies for late registration because he had an application for asylum pending or subject to review at the time he filed his TPS application. The record shows that the applicant's attorney filed a motion requesting the administrative closure of removal proceedings, which was granted by BIA on November 25, 2002. Therefore, the applicant had 60 days from the notice date of November 25, 2002 to file his application requesting TPS status in order to qualify for late registration under 8 C.F.R. § 244.2(f)(2)(ii) and 8 C.F.R. § 244.2(g). However, the record shows that the applicant did not file his TPS application until September 12, 2003, which is beyond the initial registration period, and not within 60 days of the termination of administrative proceedings appealing the denial of his asylum claim. The applicant has not demonstrated that he is eligible for late registration pursuant to 8 C.F.R. § 244.2(f)(2). The director's decision with respect to this issue will be withdrawn.

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 was requested on October 21, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided affidavits from the applicant's sister [redacted] and brother-in-law [redacted] in which they stated that the applicant had continuously resided in the United States since 1998. The applicant also submitted documentation attesting to his asylum application, hearing, and appeal.

The director determined that the applicant had submitted sufficient evidence to establish that he had continuously resided in the United States prior to February 13, 2001. (Emphasis added.) The director also determined that the

applicant had failed to submit sufficient evidence to demonstrate his continuous physical presence in the United States since March 9, 2001.

Contrary to the director's decision, the AAO finds that the applicant has failed to submit sufficient evidence to establish continuous residence in the United States **since** February 13, 2001. (Emphasis added.) Section 244(c)(1)(A)(ii) of the Act.

On appeal, counsel asserts that although he did not maintain contact with the applicant between December of 2001 and August of 2003, he maintained contact with his relatives, as they were also his clients. Counsel reasserts the applicant's claim of eligibility for TPS and submits the following documentation:

1. A translated affidavit from in which she states that she is the applicant's sister, that the applicant lived in her house from June of 1998 to December of 2000, that the applicant worked for the Renaissance restraint during the year 2001, and that the applicant traveled from Colorado to Nantucket, Massachusetts in January of 2002 seeking employment;
2. A letter dated April 28, 2004 from the Nantucket County Sheriff in which he states that he has known the applicant for the past two and one-half years, that he can verify that the applicant has been living and working on Nantucket, and that the applicant has been employed by the Hen House Restaurant and Miacomet Golf Course;
3. A translated letter from in which he states that he is the brother of the applicant, that they both lived in their sister's house in Colorado until 2000, that they lived together in Basalt, Colorado for two years, and that they then moved to Nantucket where they worked and lived together;
4. An affidavit from in which she states that she has known the applicant for over two years, and that she and the applicant have worked together for six months at the Kitty Murtagh's restaurant;
5. A letter from of Nantucket, Massachusetts in which he states that the applicant has been his tenant since early 2001, and that the applicant has worked for him for a couple of years; and,
6. A letter from the executive chef at Nantucket Golf Club in which he states that the applicant has worked at the club for two seasons in its kitchen.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. As noted by the director, "the evidence you submitted only documents your presence in the United States until October 2001, and after September 2003." Although counsel states that he maintained contact with the applicant's relatives between December of 2001 and August of 2003, the applicant's relatives are not having their eligibility determined in this matter. Maintaining contact with a third party or relative of the applicant is not sufficient to establish the applicant's continuous residence and continuous physical presence in the United States.

There has been no corroborative evidence submitted to support the statements made by and regarding the applicant's claimed presence in the United States beginning in May of

1998. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiants have not demonstrated that their statements are based on something other than what the applicant told them about his entry into the United States. If not, then the statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

Although states that the applicant has been his tenant in Nantucket since 2001, there has been no independent documentary evidence submitted to substantiate this claim. In addition, the statements made by (No. 1 above) and (No. 3 above) contradict the statement made by Without corroborative evidence, the affidavits and letters from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States during the requisite time period from February 13, 2001 to September 12, 2003. 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(2)(i) and (v).

The applicant has, therefore, failed to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision with respect to the issue of continuous residence will be withdrawn, and her decision with respect to the issue of continuous physical presence in the United States will be affirmed.

An alien applying for TPS has the burden of proving that he 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 stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.