

**PUBLIC COPY**



**U.S. Citizenship  
and Immigration  
Services**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

MI



FILE:



[EAC 03 258 56494]

Office: VERMONT SERVICE CENTER

Date: **OCT 06 2005**

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.

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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant asserts that when he asked if he was eligible for late initial registration, he was told by Citizenship and Immigration Services (CIS) that he was. The applicant implies that if an applicant properly files an application for TPS during the initial registration period, he or she is eligible at any time thereafter.

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 on June 27, 2003 for failure to respond to the Notice of Intent to Deny. Although the director stated in his decision that the denial was without prejudice to filing another Form I-821, the applicant did not file a second application for Temporary Protective Status during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 13, 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 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 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 a subsequent Form I-821 on September 13, 2003. Since the initial application was denied on June 27, 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 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 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 13, 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 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 November 20, 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 residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on March 5, 2004.

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

The applicant has failed to submit any evidence to substantiate his claim of eligibility for late registration. There is nothing in the record to corroborate the advice he allegedly received from CIS concerning his application

status. Although the applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. 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.

Beyond the decision of the director, another 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 initially submitted the following documentation:

1. A handwritten receipt from Luisa's Mexican Clothing store dated February 4, 2001 and bearing the applicant's name; and,
2. A letter from the owner of Luisa's Mexican Clothing store dated "March of 2001" in which he stated that the applicant was a client of his and that he resided at [REDACTED]

As stated above, the applicant was requested on November 20, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

3. A copy of a letter from Trigon medical dated December 11, 2001 and bearing the applicant's name and Harrisonburg, Virginia address;
4. A copy of a letter from the Social Security Administration dated August 29, 2001 and bearing the applicant's name and Harrisonburg, Virginia address;
5. Copies of pay statements from Wampler Foods, Inc. bearing the applicant's name as employee and dated December 2000, January, February, March, July, September, and November of 2001, and January of 2002;
6. Copies of two rent receipts dated March and July of 2001 and bearing the applicant's name as renter; and,
7. Copies of receipts from [REDACTED] dated August of 2002 and bearing the applicant's name as payer.

The director determined that the applicant had submitted sufficient evidence to establish his eligibility for TPS.

However, in review of the entire record of proceedings, it does not appear that the applicant has submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The handwritten receipt appears to have been altered and the letter from the Luisa's Mexican Clothing storeowner fails to specify the time period in which he has been acquainted with the applicant. The applicant has failed to submit any objective evidence to explain or justify the apparent alteration. Further, the evidence has little evidentiary

weight or probative value and is not substantiated by sufficient corroborative evidence. Items Numbered 3, 4, 6, and 7 above are all dated subsequent to the requisite time period; and therefore, cannot be used to establish the applicant's eligibility. The authenticity of the pay statements submitted by the applicant (No. 5 above) is questionable in that the applicant claims to have entered the United States February 8, 2001; however, the first pay statement is dated December of 2000. 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 establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision will be withdrawn with respect to this issue.

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 in that he has failed to show that he is eligible for late registration. In addition, the applicant has failed to submit sufficient evidence to establish that he has continuously resided in the United States since February 13, 2001, and that he has continuous physical present in the United States since March 9, 2001. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.