



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[LIN 03 280 51578]

Office: Nebraska Service Center

Date: OCT 17 2005

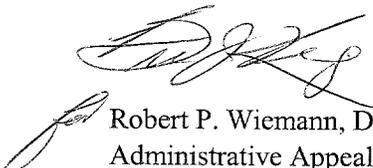
IN RE: Applicant: [REDACTED]

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, 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 his date of entry to the United States and his continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

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 [EAC 01 141 51669] for TPS during the initial registration period. That application was denied on September 8, 2001, due to abandonment. The applicant filed a motion to reopen the application on October 3, 2001. The director approved the motion on December 17, 2001 and requested the applicant to appear for a fingerprint appointment. On July 9, 2002, the director denied this application again due to abandonment, because the applicant failed to appear for a scheduled fingerprint appointment.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 29, 2003. The director denied this application [EAC 03 280 51578] on January 21, 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 date of entry into the United States and his 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 21, 2001. That initial application was denied by the director on July 9, 2002. 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 29, 2003. Since the initial application was denied on July 9, 2002, 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 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 a copy of his birth certificate or passport and a current copy of his photo identification. In addition, the applicant was requested to

submit evidence establishing his date of entry to the United States as of February 13, 2001, his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001. In response, the applicant submitted copies of his photo identification and passport. The applicant also submitted some evidence relating to his continuous physical presence and continuous residence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director determined that the applicant had failed to establish he was eligible for TPS late registration. The director also determined that the applicant failed to establish his date of entry, continuous residence and continuous physical presence in the United States during the requisite time periods. The director, therefore, denied the application on January 21, 2004. The director noted in his decision that the applicant provided a copy of his passport and Indiana State identification.

On appeal, the applicant submits the following documentation in support of his claim of eligibility for TPS: copies of his marriage certificate, his birth certificate, his Employment Authorization card, his State of Indiana personal identification and driver license issued on November 30, 2001; a copy of his El Salvadoran personal identification card and passport issued on September 25, 1998, in Chicago, Illinois; a copy of a letter from his landlord dated February 10, 2004, stating that he was a tenant from January 2000 to July 2002 at 211 E. 3rd Street in Huntingburg, Indiana; a copy of a receipt dated September 25, 1998, for the issuance of his passport; a copy of a Receipt Notice from the Service dated February 8, 1999; a copy of a request for evidence dated July 2, 1999, from the Nebraska Service Center director; a copy of the letter from the Selective Service System dated August 20, 1999; a copy of a Limited Power of Attorney dated June 8, 2001; copies of his applications for employment authorization and temporary protected status dated March 15, 2001; copies of receipt notices from the Service dated March 21, 2001, April 3, 2001 and October 3, 2001; a copy of a release notice dated June 8, 2001; copies of his earnings statements from Woodmaster, Inc. dated October 27, 2001 to December 8, 2001; a copy of a denial notice from the Service dated December 7, 2001; copies of his El Salvadoran passport issued to him in Santa Ana on July 19, 2002; copies of his itinerary, passenger receipt and flight coupons for his trip from Atlanta on July 12, 2002, to San Salvador, and return on September 26, 2002; a copy of a letter dated July 17, 2002, regarding his request to travel to El Salvador; a copy of his Social Security Statement dated April 30, 2003, reflecting income earning in the years 2001 and 2002; a copy of a certificate of title for his vehicle purchased on June 20, 2003; and, a copy of a letter dated August 5, 2003, from the Internal Revenue Service.

The first issue in this proceeding is whether the applicant has established his date of entry into the United States as of 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. On appeal, the applicant has provided sufficient evidence to establish his date of entry, his qualifying continuous physical presence, and his continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Additionally, the applicant was granted Advanced Parole on July 1, 2002, to travel to El Salvador until October 3, 2002. The applicant has overcome this portion of the director's decision. Therefore, the director's decision to deny the application based on this issue is withdrawn.

The second 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, the applicant submits additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. However, 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 on this ground will 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.