



U.S. Citizenship
and Immigration
Services

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FILE:

[SRC 05 022 53998]

Office: TEXAS SERVICE CENTER

Date: **APR 11 2006**

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to establish he was eligible for late initial registration and that he had entered the United States prior to February 13, 2001.

On appeal, the applicant states:

At this time Oseas A. Morales confirm that I entered the United States of America in 1999 also that I have sent evidence and money orders for \$110.00 dollars. I would appreciate if BCIS can re-open my case and look it over.

The applicant submits additional documentation concerning his continuous residence and continuous physical presence in the United States.

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.

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. An 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The Secretary of the Department of Homeland Security has granted an extension of the TPS designation with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reflects that the applicant filed his initial application Citizenship and Immigration Services (CIS), on November 1, 2004.

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 qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on November 23, 2004. On appeal, the applicant submitted three documents. The first is a letter from [REDACTED] Naples, Florida, dated December 18, 2004, who states he has known the applicant since he first came to the area and that he has worked for his jewelry shop in Naples, Florida off and on for the

language documents must be accompanied by an English translation, which has been certified by a competent translator.

The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States. However, 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 the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The applicant indicates on his Form I-821, Application for Temporary Protected Status signed October 20, 2004, that he entered the United States on December 21, 2000. However, on appeal, the applicant indicates that he entered this country in 1999. The record also contains the applicant's undated statement that "I entered the U.S. in December 21, 2000 but I was not detained by immigration. I was detained on 06/15/2004, when I was close to the Mexican border but by this time, I was already residing in the United States." The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated June 14, 2004, indicating that the United States Border Patrol apprehended the applicant after he illegally entered this country by wading across the Rio Grande River ".25 miles East of the Eagle Pass, Texas Port of Entry." Additionally, the applicant was issued a Form I-862, Notice to Appear, ordering him to appear before an Immigration Judge that carries the allegation by a Supervisory Border Patrol Agent in Eagle Pass, Texas that "You arrived in the United States at or near Eagle Pass, Texas, on or about June 14, 2004." Although the applicant could have challenged that statement at his hearing, the record shows that he did not honor that notice. On August 13, 2004, an Immigration Judge in San Antonio, Texas ordered the applicant removed from the United States after he failed to appear for his hearing. The Field Office Director of the San Antonio, Texas, (a Department of Homeland Security official), issued a Warrant of Removal/Deportation dated September 27, 2004.

The applicant is required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). None of the evidence presented by the applicant establishes his continuous residence since February 13, 2001 and his continuous physical presence from March 9, 2001. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS is affirmed for these reasons.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

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.