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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [REDACTED]
[EAC 04 073 54040]

Office: VERMONT SERVICE CENTER

Date: **JAN 05 2006**

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 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 found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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

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 July 9, 2002 due to abandonment.

The applicant filed a Motion to Reopen on August 3, 2002. The director denied the motion on December 20, 2002, for failure to demonstrate that the decision was in error.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on July 28, 2004. 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 her 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 May 3, 2001. The director denied the initial TPS application 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 December 22, 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 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 December 22, 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 April 14, 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 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 July 28, 2004.

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

The applicant 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

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.

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 initially submitted the following documentation:

1. Copies of Western Union money order receipts dated December 23, 1999 and April 19, 2000 that listed the applicant as sender;
2. A copy of the applicant's Delaware Driver's License issued March 25, 2002; and,
3. A copy of a birth certificate from the State of Delaware dated March 3, 2003 that listed the applicant as the child's father.

As stated above, the applicant was requested on April 14, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

5. A copy of an Applicant Information Worksheet dated July 14, 2001 that listed [REDACTED] as the applicant;
6. A copy of the applicant's IRS Form W-2, Wage and Tax Statement for the 2002 tax year;
7. A copy of the applicant's Delaware State Individual Tax Return for the 2002 tax year;
8. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return for the 2002 tax year;
9. Copies of rent receipts bearing the applicant's name as renter and dated January through December of 2001 and January through December of 2002;
10. Copies of deposit receipts from First Union National Bank for April, June, July, and August of 2002;
11. A copy of a medical prescription written by Dr. Chinyu Su, M.D. dated April 18, 2001 and bearing the applicant's name;
12. A copy of an automobile insurance identification card from American Independent Insurance dated April 2, 2002 and bearing the applicant's name as the insured;
13. A copy of an automobile insurance bill from American Independent Insurance dated July 14, 2002 and bearing the applicant's name as the insured;
14. A copy of an auto rate quote dated September 18, 2002 and bearing the applicant's name as vehicle owner;
15. A copy of an insurance receipt from A to Z Insurance Company dated August 22, 2002 and bearing the applicant's name as the insured;
16. A copy of the applicant's IRS Form W-2, Wage and Tax Statement and IRS Form 1040, U.S. Individual Income Tax Return for the 2001 tax year; and,

17. A copy of bank statements from First Union Bank date January through August of 2002 and bearing the applicant's name as account holder.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 28, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

18. A letter from Anagnostis Matulas of Five Star Pizza in which he states that the applicant was employed by the company during 2001 and 2002, for approximately one year.

The applicant has not 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 employment letter from Anagnostis Matulas has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, is not specific as to the dates of applicant's employment, does not describe the applicant's duties, and does not provide the address where the applicant resided during the period of his employment.

The copies of the rent receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since August of 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these rent receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The Western Union money order receipts (No. 1 above) are dated prior to the requisite period, and therefore cannot be used as evidence to establish continuous residence and continuous physical presence in the United States. The applicant's Delaware Driver's License, son's birth certificate, automobile insurance information, income tax information for the 2002 tax year, medical prescription, and First Union Bank statements (Nos. 3-17 above) are all dated subsequent to the requisite time period, and therefore cannot be used to establish his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant's 2001 income tax information (No. 16 above) shows that he realized total wages in the amount of \$1,400.00 for that tax year. There has been no evidence submitted to establish when, during the 2001 tax year, the applicant was actually employed. The tax documents submitted are insufficient to establish the applicant's continuous presence in the United States beginning February 13, 2001.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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. 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.