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U.S. Citizenship
and Immigration
Services

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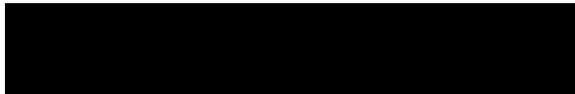
[REDACTED]
[EAC 03 240 52117]

Office: VERMONT SERVICE CENTER

Date: JAN 05 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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.

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 August 11, 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 September 15, 2003, and October 2, 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 July 12, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and states that he did not hear about the TPS program until late.

The applicant submitted evidence in an attempt to establish his qualifying 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 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 along with his TPS application:

1. An affidavit [REDACTED] which she stated that she has known the applicant since January of 2001, and has used him to help with the landscaping and small jobs around the house;
2. An affidavit [REDACTED] in which she stated that she has known the applicant since January of 2001, that he frequents her store about 4 to 5 times per week, and that he has assisted her in fixing her computer;
3. An affidavit [REDACTED] in which he stated that he has known the applicant since January of 2001 and that the applicant has completed small jobs for him around the house, including grass cutting; and,
4. An affidavit [REDACTED] a restaurant worker, in which he stated that he has known the applicant since December of 2000 and that the applicant has been a regular customer at the restaurant.

As stated above, the applicant was requested on September 15, 2003, and October 2, 2003, to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

5. A letter from the registrar [REDACTED] School in Midlothian, Virginia, in which she stated that the applicant had been enrolled at the school for the 2003-2004 school term;
6. A copy of the applicant's transcripts from the Meadowbrook High School for the 2000-2001 school term and a copy of his transcript from the James River High School for the 2002-2003 school term;
7. Copies of the applicant's interim progress reports from Meadowbrook High School for the 2001 school term;
8. A letter from the applicant in which he stated that he initially attended Meadowbrook High School in 2001 and transferred to James River High School in September of 2002, that he has lived with his [REDACTED] in Richmond, Virginia, since December of 2000, and that his sister applied for and received legal custody of the applicant on February 27, 2002;
9. A letter from [REDACTED] which she stated that she was the applicant's sister, that the applicant has been living with her in Richmond, Virginia, since December of 2000, and that she obtained legal custody of him on February 27, 2002;
10. Copies of court documents submitted to the Chesterfield County Court House dealing with the custody of the applicant dated August 2001 and February 2002,
11. An affidavit dated August 24, 2001, from [REDACTED] in which she states that she is the guardian of the applicant for school enrollment purposes; and,
12. Copies of letters from Meadowbrook High School to the parent/guardian of the applicant regarding his attendance at that school dated October through December of 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 12, 2004.

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

13. A copy of an affidavit from the applicant's parents taken in El Salvador and dated August 15, 2001, in which they give permission to Ines Arias to take custody of their son in order to enroll him in school in the United States;
14. Copies of court documents relating to the applicant's custody case dated August and September of 2001; and,
15. An official copy of the applicant's school transcripts from James River High School for the school years 2001-2002 and 2002-2003.

The applicant resubmits school transcripts, letters from the Meadowbrook High School, court records, and the [REDACTED] and affidavit as evidence.

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. There has been no corroborative evidence submitted to support the statements made by [REDACTED] regarding the applicant's residence and physical presence in the United States since February 13, 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear

and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. 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(a)(2)(i) and (v).

The Chesterfield County court documents (Nos. 10 and 14 above) and the Chesterfield County school records (Nos. 5, 6, 7, 12, and 15 above) are all dated subsequent to February 13, 2001, and March 9, 2001, and therefore, cannot be used to establish continuous residence and continuous physical presence for purposes of TPS eligibility. Although the Chesterfield County school records indicate that the applicant was enrolled in high school during the 2001-2002 school year there has been no corroborating evidence submitted to demonstrate specifically his school attendance during the months of February and March of 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.