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

MI



FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

[EAC 04 070 53308]

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.

Cindy N. Gomez for

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

On appeal, the applicant submits a statement and additional evidence. He also resubmits documentation that had previously been entered into the record.

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 [EAC 01 204 51165], during the initial registration period. On November 14, 2002, the director requested the applicant to submit evidence establishing his nationality, his continuous residence, and his continuous physical presence in the United States during the requisite periods. That application was denied due to abandonment on July 3, 2003, after the applicant failed to respond to the request for additional evidence to establish his eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The record indicates that the denial was sent again on January 3, 2004. The applicant did not file a motion to reopen during the requisite timeframe. It is noted that the Request for Additional Evidence and the denial decision were mailed to the applicant's last known address, as he had provided on his TPS and employment authorization applications and correspondence.

The applicant filed this subsequent Form I-821, Application for Temporary Protected Status, on December 27, 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. The director also denied the application because the applicant had failed to establish 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 May 29, 2001. That initial application was denied by the director on July 3, 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 this subsequent Form I-821 on December 27, 2003. Since the initial application was denied on July 3, 2003, this 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 designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on December 27, 2003.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his 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 record of proceedings confirms that the applicant filed this 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 fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On April 5, 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

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, in response, submitted photocopies of the following documentation: his El Salvadoran birth certificate, [the English translation of which was provided earlier]; his El Salvadoran electoral card dated in 1998; and, his El Salvadoran passport issued on February 14, 2002, by the Consulate General, Washington, D.C.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 14, 2004.

On appeal, the applicant states that he is presenting the only evidence he has available. He states that he began working a few days after entering the United States, but was paid only in cash, and therefore does not have pay stubs. He states that he rented a room with friends, and that he has a pending "Labor Certificate" application. In support of the appeal, the applicant submits generic rent receipts for various months beginning in February 2001 through 2004. The applicant also resubmits photocopies of his passport and birth certificate.

The applicant previously 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 Form I-821, within the initial registration period. As noted above, because his initial TPS application was denied on July 3, 2003, this subsequent application cannot be considered as a re-registration, and can only be considered as a late registration. 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) and (g). Consequently, the director's decision to deny this application for temporary protected status will be affirmed.

The second and third issues in this proceeding are 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.

As stated above, the applicant was requested on April 5, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided the documentation as identified above.

With his earlier applications, the applicant had also submitted: a letter dated April 10, 2001, from [REDACTED] confirming the applicant's address and his attendance at the church since January 10, 2001; another letter dated November 14, 2003, from [REDACTED] attesting to the applicant's character and his residence in the United States since approximately January 5, 2001; and, a photocopy of his employment authorization document (EAD) valid under Category C19 with validity from September 10, 2002 through September 9, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on September 14, 2004.

On appeal, the applicant reasserts his claim and submits the documentation, consisting of rent receipts and previously submitted materials, as identified above.

The rent receipts are generic and have been signed as having been received by the same individual between the years of 2001 and 2004, although the applicant indicated on his Form I-821 applications that he had changed addresses during this timeframe. The letter dated April 10, 2001, from Reverend [REDACTED] Associate Pastor, St. Anthony of Padua Catholic Church, Falls Church, Virginia, conforms to the regulatory requirements of the regulatory provisions at 8 C.F.R. § 244.9(a)(2)(v)(A) through (G). However, the second letter dated November 14, 2003, from [REDACTED] Pastor, Holy Family Catholic Church, Dale City, Virginia, indicates that the applicant "is a parishioner at our parish" located in Dale City, Virginia, while the applicant lived in Alexandria, Virginia. The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, 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 to deny the application for TPS on these grounds will also 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 temporary protected status 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.