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

M1



FILE: [REDACTED]
[EAC 04 070 52411]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUN 28 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:



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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 on September 3, 2004, because the applicant failed to establish his eligibility for late initial registration, his nationality, 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 November 27, 2004, the applicant failed an appeal from the denial decision. The director rejected the appeal as untimely filed but accepted it as a motion to reopen. The director affirmed his prior decision, finding that the applicant failed to establish his eligibility for late initial registration, his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant submits a brief and additional evidence.

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 TPS application during the initial registration period under receipt number EAC 02 046 55495. The director denied that application on due to abandonment April 30, 2003, because the applicant failed to respond to a request for additional evidence dated March 12, 2003. 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 applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 5, 2004. The director denied this second application, in part, 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 October 11, 2001. The director denied that application on April 30, 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 a subsequent Form I-821 on January 5, 2004. Since the initial application was denied on April 30, 2003, 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 designated by the Attorney General 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 Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. 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 the latest extension valid until September 9, 2006, upon the applicant's re-registration during the requisite period.

The first issue in this proceeding is whether the applicant has established his eligibility for late initial registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current TPS application with Citizenship and Immigration Services (CIS) on January 5, 2004.

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

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).

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 identity and nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The request was mailed to the applicant at his address of record, but the record does not contain a response from the applicant.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 3, 2004. On February 4, 2005, the director rejected the applicant's appeal from the

denial decision but accepted it as a motion to reopen. The director affirmed his prior decision, finding that the applicant failed to establish his eligibility for late initial registration.

On appeal, counsel for the applicant states that the applicant filed his initial TPS application during the initial registration period for Salvadorans. Counsel asserts that the applicant never received the denial decision dated April 30, 2003.

As previously stated, the director denied the applicant's initial TPS on April 30, 2003, due to abandonment because he failed to respond to the request for additional evidence dated March 12, 2003. Both the request for additional evidence and the denial decision were mailed to the applicant's current address at that time. The applicant did not report another change of address until January 5, 2004, when he filed his second Form I-821.

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. Since the applicant's initial TPS application was denied, and the current TPS application was filed after the expiration of the initial registration period had expired, the applicant must establish his eligibility for late initial 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). Consequently, the director's finding that the applicant failed to establish his eligibility for late initial registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant indicated on his Form I-821 that he entered the United States without inspection on February 9, 2001. In support of his application, he submitted the following:

1. an affidavit dated October 4, 2001, stating that the applicant entered the United States on February 9, 2001, and has not left the country since that date; and,
2. photocopies of earnings statements dated March 23, 2001, March 30, 2001, and April 6, 2001.

On appeal, the applicant submitted the following additional evidence:

3. a photocopy of the biographic page of the applicant's El Salvadoran passport issued in Washington, D.C., on October 16, 2001;
4. photocopies of earnings statements from Inc., dated: April 13, 2001; April 20, 2001; April 27, 2001; May 4, 2001; May 11, 2001; May 18, 2001; May 25, 2001; and, June 8, 2001;

5. photocopies of earnings statements from Construction Applicators dated: June 26, 2002; July 3, 2002; July 10, 2002; July 17, 2002; July 24, 2002; and, July 31, 2002;
6. photocopies of earnings statements [REDACTED] Inc., dated: May 31, 2002; June 7, 2002; August 23, 2002; September 6, 2002; and September 13, 2002; and,
7. a photocopy of a money transfer receipt dated May 26, 2002.

The applicant has submitted only an affidavit from [REDACTED] (No. 1 above) to establish his entry into the United States on February 9, 2001, and his residence and physical presence in the United States prior to March 23, 2001, the earliest earnings statement submitted by the applicant (No. 2 above). Without corroborative evidence, the affidavit from [REDACTED] is not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence from February 13, 2001 to March 23, 2001. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not submitted any evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the periods from June 8, 2001 to October 16, 2001; from October 16, 2001 to May 31, 2002; and, from September 13, 2002 to January 5, 2004, the filing date of the current TPS application.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He has, thereby, 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 applicant's TPS application for these reasons will also be affirmed.

The third issue in this proceeding is whether the applicant has established his identity and nationality.

Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of the alien's passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

On appeal, the applicant has submitted a photocopy of the biographic page of his El Salvadoran passport. The applicant has overcome this ground for denial of the application. Therefore, the director's finding that the applicant failed to establish his identity and nationality will be withdrawn.

However, the application must be denied because the applicant has failed to establish his eligibility for late initial registration and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The appeal will be dismissed 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.