



U.S. Citizenship
and Immigration
Services

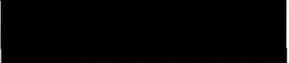
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FILE:



Office: Nebraska Service Center

Date: **JUN 27 2006**

[LIN 03 275 50562]

IN RE:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 submit evidence to establish he was eligible for late registration, his "date of entry, residence and physical presence."

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 [LIN 01 252 52725] for TPS on August 23, 2001, during the initial registration period. That application was denied on February 12, 2002, due to abandonment because the record reflects that the applicant failed to appear for his scheduled fingerprint appointment. 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 a second Form I-821, Application for Temporary Protected Status, on September 9, 2002, also during the initial registration period. The director denied this application [LIN 03 022 50791] on April 1, 2003, because the applicant failed to meet the requirements for establishing his identity and nationality. The director also denied the application because the application failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant could have filed an appeal from the director's decision within 30 days from the date of the denial. The applicant did not file an appeal during the requisite timeframe.

The applicant filed a third Form I-821, Application for Temporary Protected Status, on September 19, 2003. The director denied the instant application [LIN 03 275 50562] on February 3, 2004, because the applicant failed to submit evidence "of late registration, date of entry, residence, and physical presence."

Since the applicant did properly file applications during the initial registration period, the director erred in his 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 TPS applications were properly filed on August 23, 2001 and on September 9, 2002. These initial applications were denied by the director on February 12, 2002, and on April 1, 2003, respectively. 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 the instant Form I-821 on September 19, 2003. Since the initial applications were denied on February 12, 2002, and on April 1, 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 is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, 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).

On December 12, 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 "residence in the United States since February 13, 2001", and his continuous physical presence in the United States from March 9, 2001. In response, the applicant submitted some evidence in an attempt to establish his continuous physical presence and continuous residence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director determined that the applicant had failed to establish he was eligible for TPS late registration and denied the application on February 3, 2004. The director noted in his decision to deny that the applicant failed to submit any evidence of late registration, date of entry, residence and physical presence.

On appeal, the applicant states that he had previously sent documentation twice that included copies of birth certificates, car loan, photos and pay stubs for the year 2001. The applicant did not provide any additional evidence along with his appeal.

The first issue in this proceeding is whether the applicant has established his continuous residence and his continuous physical presence in the United States during the requisite time periods.

The record of proceedings reflects that the applicant submitted along with the instant TPS application the following: copies of his Michigan Chauffeur License bearing an expiration date of July 17, 2007; copies of his BankOne and CaptialOne credit cards; a copy of his El Salvadoran passport issued on November 17, 2003, in Chicago, Illinois; copies of the birth certificates of his children born in the United States on April 28, 1998, and March 18, 1999; a copy of his savings account profile from Bank One in Detroit, Michigan, indicating that he opened the account on March 13, 2002; and copies of his application for a car loan and insurance dated October 10, 2002.

It is also noted that the director erred in stating that the applicant did not respond to the director's request for evidence. A review of the record reflects that the applicant had submitted the following evidence in response to the director's December 12, 2003 Notice of Intent to Deny: a copy of his Michigan Chauffeur License bearing an expiration date of July 17, 2007; a copy of his BankOne credit card; a copy of his earnings statement from Personnel Wage, Inc. reflecting a check date of November 14, 2003; a copy of a billing statement from CaptialOne dated November 7, 2003; a copy of a billing statement from State Farm Insurance dated November 19, 2003; and a copy of a car insurance application dated October 10, 2002.

The record of proceedings also contains copies of the applicant's Michigan Operator's License valid until July 17, 2007, a copy of a Birth Statement from Hutzel Hospital reflecting the birth of the applicant's daughter on November 7, 2001; a copy of a Certificate of Baptism for his sons dated September 12, 1999 and February 21, 1999; a copy of a monthly statement from Ameritech dated March 25, 2001; copies of two medical assistance authorization cards from the Michigan Department of Community Health bearing eligibility periods from February 1, 2001 to February 28, 2001, and May 1, 2001 to May 31, 2001; copies of the applicant's Michigan State Operator's license bearing an expiration date of July 17, 2003, and a change of address dated May 1, 2002; and, a copy of a letter dated June 24, 1999, from a physician at Health Medical Clinic in Cleveland, Ohio regarding the applicant's sons.

A review of the evidence submitted by the applicant establishes that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001, to the date of filing his application. Therefore, the director's decision to deny the application based on these issues is withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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. A review of the record of proceedings reflects that 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 decision to deny the application for TPS late registration will 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 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.