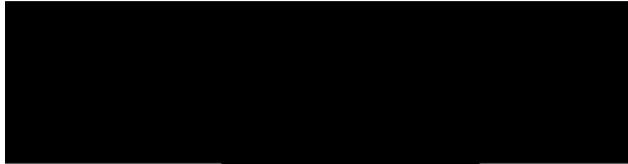




U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date:

JUN 27 2006

[EAC 04 064 50288]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 he was eligible for late registration. The director also denied the application because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. In addition, the director denied the application because the applicant failed to establish that he is a national of El Salvador.

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 filed his initial application [EAC 01 180 51069] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 16, 2001. That application was denied on April 10, 2002, due to abandonment because the applicant failed to appear for his scheduled fingerprint appointment. The applicant did not file a motion to reopen this application during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 15, 2003. The director denied this application on September 15, 2004, 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 failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. In addition, the director denied the application because the applicant failed to establish that he is a national of El Salvador.

Since the applicant did properly file an application 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 Form I-821 was properly filed on April 16, 2001. That initial application was denied by the director on April 10, 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 15, 2003. Since the initial application was denied on April 10, 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 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 May 6, 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). In addition, the applicant was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The director also requested the applicant to submit evidence establishing that he is a citizen or national of El Salvador. The record did not contain a response from the applicant; therefore, the director denied the application on September 15, 2004.

On appeal, the applicant states that he has been in the United States since November 1997. The applicant also submits the following documentation along with his appeal: copies of his high school student identification cards; a copy of his State of North Carolina Driver License; a copy of his Employment Authorization card valid from May 28, 2001 to September 9, 2002; copies of his receipt notices dated May 18, 2001, January 3, 2003, and January 6, 2004, regarding his applications for temporary protected status and employment authorization; a copy of his fingerprint receipt notice dated May 18, 2001; copies of his application for Employment Authorization; a copy of a rejection notice dated September 12, 2003; a copy of the director's denial notice dated October 24, 2003, denying his application for employment authorization; a copy of the Employment Authorization card of his mother, [REDACTED] bearing a "C19" category; a copy of billing statement from [REDACTED]

Cablevision dated September 2, 2003; a copy of a letter from the Internal Revenue Service dated April 15, 2002; a copy of his Verizon telephone bill dated April 1, 2003; a copy of a Transcript of Marks from the Glen Cove High School reflecting the applicant's grades from 1998- 2002; copies of his IRS Form W-2, Wage and Earnings Statements and U.S. Individual Income Tax Return for the year 2003; and copies of the applicant's birth certificate along with an English translation.

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.

On appeal, the applicant submits copies of his high school identification cards from Glen Cove High School in Glen Cove, New York for the years: 1998 to 1999, 1999 to 2000, and 2000 to 2001. In addition, the record contains the applicant's high school transcripts from 1998 through 2002. Thus, the applicant has established his qualifying continuous residence and continuous physical presence in the United States. Therefore, the director's decision to deny the application based on this issue 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. 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.

On appeal, the applicant provides a copy of the Employment Authorization card of his mother [REDACTED] bearing a "C19" category and valid from February 9, 2004 to March 9, 2005. A review of the CIS' electronic systems reflects that [REDACTED] TPS application was denied on June 4, 2003, and a subsequent motion was denied on February 9, 2004. As such, the applicant's mother is not currently an alien eligible to be a TPS registrant. The applicant has failed 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 third issue in this proceeding is whether the applicant has established that he is a national of El Salvador.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an

affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, the applicant provides a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. The record reflects that the applicant had entered the United States on November 11, 1997, using an El Salvadoran passport bearing the name of [REDACTED]. However, a review of the record reflects that the applicant had purchased this passport in order to gain entry into the United States. The applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. Therefore, the director's decision to deny the application on this ground will also be affirmed.

It is noted that the immigration judge administratively closed his removal proceedings at New York City, New York on August 22, 2001.

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.