

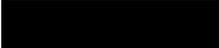
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U.S. Citizenship  
and Immigration  
Services

FILE:   
[EAC 04 144 52420]

Office: VERMONT SERVICE CENTER

Date: **MAR 22 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:



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.

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: (1) his identity and nationality; (2) his eligibility for late initial registration; (3) continuous residence in the United States since February 13, 2001; and, (4) continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement 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 application for TPS during the initial registration period. That application was denied on June 13, 2002, for failure to respond to a request for 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 applicant filed the current Form I-821, Application for Temporary Protected Status, on April 14, 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 July 17, 2001. The director denied that initial application on June 13, 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 April 14, 2004. Since the initial application was denied on June 13, 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 who is a national of a foreign state 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 § 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. 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his current TPS application with Citizenship and Immigration Services (CIS) on April 14, 2004.

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 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).

The applicant did not submit any evidence to establish his identity and nationality with the prior Form I-821 or the current Form I-821. On August 18, 2004, the applicant was requested to submit proof of identity and nationality, evidence to establish his eligibility for late initial registration, and evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted photocopies of CIS correspondence relating to his prior and current Forms I-821.

The director determined that the applicant had failed to establish his identity and nationality and denied the application on November 23, 2004.

On appeal, the applicant submits a photocopy of the biographic page of his Salvadoran passport. Therefore, this ground for denial of the application has been overcome.

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

The record of proceedings confirms that the applicant filed his current TPS 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.

As previously stated, the applicant was requested on August 18, 2004, to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, submitted copies of CIS correspondence, but he did not submit any evidence to establish his eligibility for late initial registration.

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

On appeal, the applicant does not make a statement or provide any evidence to 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The third and fourth issues in this proceeding are 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 claimed on his Form I-821 that he first entered the United States without inspection on November 30, 2000. In support of his application, the applicant submitted the following evidence:

1. photocopies of earnings statements from WZ, Inc., location not identified, for the pay periods from March 21, 2001 to March 27, 2001, and from March 28, 2001 to April 3, 2001;
2. a letter dated March 12, 2004, from [REDACTED] stating she that has shared a residence with the applicant since his arrival in the United States on November 30, 2000; and,
3. a letter dated March 15, 2004, from [REDACTED] that he has known the applicant since November 30, 2000, and that he and the applicant are co-workers.

As stated above, the applicant was requested on August 18, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, submitted the following:

4. a photocopy of his Employment Authorization Card valid from August 8, 2001 to September 9, 2002 and the CIS cover letter dated August 10, 2001, that was enclosed with the applicant's Employment Authorization Card; and,

5. photocopies of a notice acknowledging receipt of receipt of his prior Form I-821 on July 17, 2001, and a notice informing the applicant that his Form I-765, Application for Employment Authorization, filed on July 26, 2001, had been approved.

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

On appeal, the applicant submits the following:

6. photocopies of earnings statements from WZ, Inc. for the pay periods from April 4, 2001 to April 10, 2001 and from April 11, 2001 to April 17, 2001; and,
7. a photocopy of an earnings statement from Baron's Steakhouse in Clementon, New Jersey, for the pay period from April 23, 2001 to May 6, 2001.

The applicant has not submitted any evidence to establish his continuous residence or continuous physical presence in the United States prior to March 21, 2001 (No. 1 above), nor has the applicant provided any evidence to establish his continuous residence and continuous physical presence in the United States from April 3, 2001 (No. 1 above) to July 17, 2001, the filing date of his prior Form I-821.

Without corroborating evidence, the letters from [REDACTED] (No. 3 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence throughout the requisite periods.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 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.