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MM

FILE:

[REDACTED]
[EAC 04 056 51390]

Office: Vermont Service Center

Date: **MAR 27 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:

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.

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 he was eligible for late registration. The director also denied the application because the applicant failed to establish his continuous residence in the United States during the requisite time period.

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 01 197 55737] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 14, 2001. That application was denied on November 14, 2003, due to abandonment because the applicant failed respond to the director's November 20, 2002, request for evidence. 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 November 28, 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 failed to establish his continuous residence in the United States during the requisite period.

The applicant's initial Form I-821 was properly filed on May 14, 2001. That initial application was denied by the director on November 14, 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 November 28, 2003. Since the initial application was denied on November 14, 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, 2006, 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 March 24, 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 applicant was also requested to submit evidence that he is a national or citizen of El Salvador. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. The director denied the application on September 7, 2004. The director stated that the evidence submitted by the applicant established continuous physical presence; however, the evidence did not establish the applicant's continuous residence in the United States since February 13, 2001. The director also noted in her decision to deny the application that the applicant had submitted two Urgente Express money transfer receipts which did not reflect the applicant's name as listed on his TPS application.

On appeal, the applicant states that he has been in the United States since March 20, 1996. The applicant also states that he did not receive the director's November 20, 2002, request for evidence with regards to his initial TPS application. The applicant further states that even though the two Urgente Express receipts reflect the name of his uncle the receipts were signed by him. The applicant also submits copies of his El Salvadoran passport and birth certificate along with an English translation as well as copies of previously submitted evidence in an attempt to establish his claimed continuous residence in the United States.

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

A review of the record of proceedings reflects that the applicant has submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001. Therefore, the director's decision to deny the application on this issue will be 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.

It is also noted that the director's November 20, 2002 request for evidence was sent to the applicant's last known address [REDACTED]. It is further noted that the applicant indicated the same address on his re-registration for TPS filed on September 12, 2002.

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.