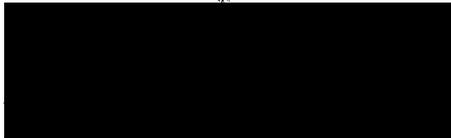


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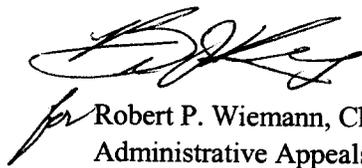
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 that he was eligible for late registration. The director also determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief statement.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on February 21, 2002, during the initial registration period (EAC 02 133 51475 relates). On June 11, 2002, the director requested the applicant to appear for fingerprinting required in connection with his application. The notice to appear was forwarded the applicant at the address indicated on his Form I-821. The applicant failed to appear as requested.

If an individual requested to appear for fingerprinting does not appear, the application shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director denied the applicant's first Form I-821 due to abandonment on September 5, 2002. On October 24, 2002, the applicant filed a request for a motion to reopen the director's decision. The director dismissed the motion to reopen on June 30, 2003.

On May 12, 2004, the director reopened the proceeding and again requested the applicant to appear for fingerprinting. The applicant appeared as requested. The director also requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant failed to respond to this request.

The director determined that the applicant had failed to submit sufficient documentation to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director again denied the application on September 8, 2004.

The applicant filed the current Form I-821 on October 30, 2003. The director denied this 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 determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or renewal of temporary treatment benefits, or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17. If the applicant is applying to renew his temporary treatment benefits, he must have a pending TPS application.

Since the applicant's first Form I-821 application was denied on February 21, 2002, the current application cannot be considered as an application for annual re-registration or renewal of temporary treatment benefits. This Form I-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. As previously indicated, the applicant filed the current Form I-821 on October 30, 2003, more than one year and one month after the initial registration period had ended.

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).

In support of his initial Form I-821, the applicant submitted evidence of his nationality and identity. He also submitted several affidavits from acquaintances attesting to their knowledge of the applicant.

On November 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 qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided photocopies of documentation already contained in the record.

The director determined that the applicant had failed to establish that he was eligible for late registration. The director also determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on January 20, 2005.

On appeal, the applicant asserts that he has already provided sufficient evidence to establish his eligibility for TPS.

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

The record confirms that the applicant filed the current Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, this Form I-821 cannot be considered as an application for annual re-registration. The current application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period. In this case, the applicant has not 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 this reason will be affirmed.

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

The applicant claims to have lived in the United States continuously from an unspecified date in June 2000, to the date of filing this application on October 30, 2003. It is reasonable to expect that he would have a variety of evidence to support this claim. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence and physical presence.

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will also 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.