U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 06 2006
[WAC 05 126 80192]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's application for re-registration, under section 244 of the Act, because the applicant's initial TPS application had been denied.

On appeal, the applicant provides a brief statement.

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.

The issue in this proceeding is whether the applicant is eligible to file for re-registration under section 244 of the Act.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension valid until September 9, 2007, upon the applicant's re-registration 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 initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on June 14, 2004. That application was denied on October 12, 2004, because the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The applicant was given 30 days (33 days if the notice was mailed) to file an appeal.

The applicant did not file an appeal.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on February 3, 2005. Any Form I-821 application subsequently submitted by the same applicant after an initial TPS 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. The applicant indicated on his Form I-821 application that he was re-registering for TPS.

If the applicant is filing an application for 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.

Since the initial TPS application was denied on October 12, 2004, the subsequent application cannot be considered as a re-registration. Consequently, the applicant is not eligible to file for re-registration under section 244 of the Act. Therefore, the director's decision to deny the application on this ground will be affirmed.

Beyond the decision of the director, the applicant has not provided evidence to demonstrate his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The record indicates that the applicant did not enter the United States until November of 2003. Consequently, the applicant could not possibly establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant is unable to meet the continuous residence and the continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Further, the applicant has not established his eligibility to file for late registration as described in 8 C.F.R. § 244.2(f)(1)(2). Therefore, the application must also be denied for these reasons.

The application will be denied for the above 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.