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U.S. Citizenship
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AUG 21 2007

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

[EAC 06 357 85669]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador.

On appeal the applicant asserts that he is eligible for TPS as the child of a currently eligible TPS registrant.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

El Salvadoran nationals applying for TPS 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 El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on August 29, 2006 – four years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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 Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

In a Notice of Intent to Deny (NOID) dated December 28, 2006, the director requested the applicant to submit evidence that he was eligible for late registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2), that he had been a continuous resident of the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director noted the applicant's statement on his Form I-821 that he entered the United States on November 27, 2005, and the documentation of the applicant's residence and physical presence submitted with the application, the earliest date of which is December 5, 2005. In reply to the NOID the applicant's mother, [REDACTED], submitted a letter requesting that her son be granted TPS as the child of TPS registrant.

On January 29, 2007, the director denied the application on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he was continuously resident and continuously physically present in the United States from the requisite dates for TPS residents from El Salvador.

On appeal the applicant reiterates the request made earlier by his mother – whom CIS records show filed for TPS in 2001 and was approved in 2005 – that he be granted TPS as the child of a TPS registrant. No new documentation has been submitted.

While the record indicates that the applicant would qualify for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) – as the child of an alien who, during the initial registration period, was “currently eligible to be a TPS registrant” – late-filing children of TPS-eligible parents must meet the same continuous residence and continuous physical presence requirements as their parents. The applicant in this case does not meet those requirements. The record clearly shows that the applicant has not been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c), because he did not enter the United States until November 27, 2005. Accordingly, the director’s denial of the application will be affirmed on the grounds that the applicant has not been continuously physically present in the United States, and a continuous resident of the United States, for the requisite periods of time.

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 that burden.

ORDER: The appeal is dismissed.