



U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 06 290 81096]

OFFICE: Vermont Service Center

DATE:

AUG 21 2007

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:

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 R. 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 was continuously resident and physically present in the United States since the requisite dates for TPS applicants from El Salvador.

On appeal the applicant asserts that he is eligible for TPS, but submits no further evidence.

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 July 13, 2006 – nearly 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).

On January 1, 2007, the director issued a Notice of Intent to Deny (NOID) in which it requested the applicant – who claims to have entered the United States in February 2000 – to submit evidence that he was eligible for late registration and met the continuous residence and physical presence requirements for TPS applicants from El Salvador, and also to submit proof of identity. The applicant responded with photocopies of his El Salvadoran passport and national identity document, which established his nationality and identity, as well as two rental agreements dated in 2001 and a letter from his landlord, dated January 29, 2007.

On March 9, 2007, the director denied the application on the grounds that the applicant had submitted no evidence to establish that he was eligible for late TPS registration, and insufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States from March 9, 2001, to the date of filing.

The applicant filed a timely appeal, reiterating his claim to be eligible for TPS and stating that he would submit additional evidence. No such additional evidence has been provided. Thus, there is still no evidence in the record that the applicant – whose TPS application was filed nearly four years after the end of the initial registration period for El Salvadoran nationals – is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The director's denial of the application on this ground will therefore be affirmed.

The AAO also concurs with the director's decision that the evidence of record fails to establish that the applicant has 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). There is no stamp or other authenticating mark on the photocopied rental agreements from 2001 to demonstrate that they were actually prepared at that time. The only other evidence in the record is the letter from the applicant's landlord, dated January 1, 2007, stating that the applicant has been a tenant since January 1, 2001. No further documentation has been submitted from the six-year time span from early 2001 to early 2007. If the applicant has lived in the United States since February 2000, as he claims, it is reasonable to expect that he would have more contemporaneous documentation. The AAO concludes, therefore, that the applicant has failed to establish his continuous residence and continuous physical presence in the United States from February and March 2001, respectively. The director's denial of the application will therefore be affirmed on these grounds as well.

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.