



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date: FEB 23 2007

[EAC 04 260 50543]

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, 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 qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

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 01 242 52261] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 3, 2001. That application was denied on June 16, 2003, due to abandonment because the applicant failed to respond to the director's request for evidence. The applicant did not file a motion to reopen this application during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 13, 2004. The director denied this instant 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant's initial Form I-821 was properly filed on August 3, 2001. That initial application was denied by the director on June 16, 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 this Form I-821 on September 13, 2004. Since the initial application was denied on June 16, 2003, the current 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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 validity until September 9, 2007, upon the applicant's re-registration during the requisite time period.

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 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 October 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). 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. 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 January 11, 2005.

On appeal, the applicant states that he has been present in the United States since February 5, 1998. The applicant also submits evidence in support of his claim of eligibility for TPS.

The first issue in this proceeding is whether the applicant has established 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.

Along with his appeal, the applicant submits several copies of his Form W-2, Wage and Tax Statements, from the years 1999 and 2000; a copy of his Form 1099-MISC, Miscellaneous Income, from 2003; copies of Wachovia Bank statements dated April 1, 2004 to June 30, 2004, and July 31, 2004 to August 31, 2004; a copy of his Verizon Wireless phone bill dated April 9, 2004; a copy of a utility bill dated July 26, 2004; a copy of a money transfer receipt dated February 24, 2004, from Banco De Comerico De El Salvador; a copy of a customer billing statement from Dominion Virginia Power dated September 4, 2004; a copy of a billing statement dated July 16,

2004; copies of cancelled checks from [REDACTED]'s Painting located in Alexandria, Virginia dated February 12, 2001, February 22, 2001, May 7, 2001, May 14, 2001, May 21, 2001, May 13, 2002, May 24, 2002, February 3, 2003, February 20, 2003, and February 28, 2003.

A review of the evidence submitted by the applicant establishes that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001, to the date of filing his application. Therefore, the director's decision to deny the application for these reasons 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 the current application after the initial registration period had closed. Since the applicant's first Form I-821 was denied, the current Form I-821 cannot be considered as an application for annual re-registration. This 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 TPS late registration will be affirmed.

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.