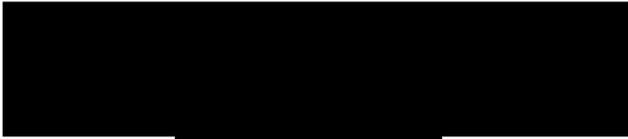




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 04 108 50335]

Office: Nebraska Service Center

Date: **JAN 12 2007**

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:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Nebraska 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 that "he had maintained residence from February 13, 2001", and his continuous physical presence in the United States since March 9, 2001.

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 [LIN 01 142 51208] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 21, 2001. That application was denied on September 14, 2001, due to abandonment. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 03 240 50062] on August 6, 2003. The director denied this second application on November 13, 2003, because the applicant failed to establish his eligibility for TPS late registration. The director also denied this application because the applicant failed to establish the he "maintained residence since February 13, 2001, and maintained physical presence in the United States since March 9, 2001, to the date of filing his application." The applicant was provided 33 days to file an appeal. The applicant did not file an appeal from this application during the requisite time period.

The applicant, through counsel, filed a third Form I-821, Application for Temporary Protected Status, on March 3, 2004. The director denied this third application [LIN 04 108 50335] on May 17, 2004, 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 instant application because the applicant failed to establish that "he had maintained residence from February 13, 2001", and his continuous physical presence in the United States since March 9, 2001.

On June 25, 2004, counsel, on behalf of the applicant, filed a motion to reopen. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. The director, therefore, affirmed his previous decision and denied the application on September 7, 2004.

Any Form I-821 application subsequently submitted by the same applicant after an 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 the instant Form I-821 on March 3, 2004. Since the initial application was denied on September 14, 2001, the subsequent applications 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 March 25, 2003, 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 "residence in the United States since February 13, 2001," and his continuous physical presence in the United States since March 9, 2001. The applicant was also requested to submit the originals of: 1) the DISH Network billing statement reflecting a due date of "03-12-2001"; and, (2) the pay stub from [REDACTED] showing a pay date of "04/09/2001."

On April 27, 2004, counsel responded to the director's request and submitted some evidence in an attempt to establish the applicant's residence in the United States; however, counsel did not submit any evidence to establish the applicant's eligibility for late registration. The director denied the application on May 17, 2004. The director noted in his decision to deny that the TPS application of the applicant's spouse, [REDACTED], had been denied and was, at that time, under motion to reopen. The director also noted that counsel did not provide the original documents as requested. The director stated that the Service requested to review the documents

because it appeared that they had been altered. The director also concluded that the applicant failed to submit any evidence or provide an explanation for the discrepancies in the applicant's claimed residence.

On June 25, 2004, counsel, on behalf of the applicant, filed a motion to reopen. The director, after a complete review of the record of proceedings, including the motion, determined that the grounds for denial had not been overcome. The director also stated in his decision that the applicant's spouse was granted TPS on June 4, 2004; thus, the applicant had met one of the requirements for TPS late registration. The director affirmed his previous decision and denied the application on September 7, 2004. On October 7, 2004, the applicant filed an appeal from the director's September 7, 2004 decision, which is now before the AAO.

On appeal, counsel argues that the applicant has resided and has been physically present in the United States since January 2001 and that he has been residing with his wife since her arrival in 1999. Counsel also states that the applicant asserts that the evidence submitted bearing his wife's name should be considered in the determination of the applicant's residence and physical presence. Counsel also states that the applications signed by the applicant, including the Receipt Notices, should be considered as valid evidence in support of the applicant's presence in the United States.

Counsel, on appeal, also submits an affidavit from the applicant's wife, [REDACTED] dated November 5, 2004, who stated that applicant had resided with her since 1999, and that they lived at was [REDACTED] in Dale, Indiana from January 8, 2001 and September 10, 2001. She also states that they moved to Nebraska on December 30, 2001.

The applicant asserts that the evidence bearing the name of the applicant's spouse should be accepted as evidence in support of his eligibility for TPS. In accordance 8 C.F.R. § 244.9 (a)(2), evidence must bear the name of the applicant. It does not seem logical that the evidence bearing only the name of his wife could establish the applicant's residence in the United States. In addition, counsel argues that the TPS and employment applications should be included in the determination of residence and physical presence in the United States. The burden is on the applicant to establish his qualifying continuous residence and continuous physical presence in the United States up to the date of filing his application. The filing dates of the applications relate only to the dates which the applicant filed his TPS applications and cannot establish qualifying continuous residence and continuous physical presence before those filing dates. Furthermore, since some of the applications were filed through third parties, these applications do not, necessarily, establish that the applicant was present in the United States at the time they were filed.

As stated previously, in his March 25, 2004, Notice of Intent to Deny, the director specifically requested the original documents of: 1) the DISH Network billing statement reflecting a due date of "03-12-2001"; and, (2) the pay stub from [REDACTED] showing a pay date of "04/09/2001." In response, counsel did not provide the requested documentation. The director also noted in his denial dated May 17, 2004, that the evidence above appeared to be altered and thus, the validity of the evidence is highly questionable. On appeal, counsel still does not provide the requested original documents, nor has the applicant provided an explanation regarding the altered documents. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the documents above, nor has the applicant provided the original documentation as requested. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy 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 temporary protected status will be affirmed, and the applicant continues to be ineligible for TPS.

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.