



U.S. Citizenship
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JAN 29 2007

FILE: [REDACTED]
[LIN 04 117 50155]

Office: Nebraska Service Center

Date:

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, reopened, and denied again by the Director, Nebraska Service Center (NSC), and is now before the Administrative Appeals Office (AAO) 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 demonstrate "residence and continuous physical presence" in the United States.

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 01 159 50304] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 4, 2001. That application was denied on February 17, 2003. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a second Form I-821, Application for Temporary Protected Status, [LIN 02 257 52150] on August 9, 2002, during the initial registration period. The director denied this application on March 3, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. On March 28, 2003, the applicant filed an appeal to the director's decision to deny the application. The director of the AAO dismissed the appeal on July 17, 2003, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed a third Form I-821, Application for Temporary Protected Status, on March 16, 2004. The director denied this third application [LIN 04 117 50155] on July 23, 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 found that the applicant had failed to establish his "residence and continuous physical presence in the United States."

Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

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 16, 2004. Since the initial and second applications were denied on February 17, 2003 and on March 3, 2003, respectively, the subsequent application cannot be considered as a re-registration. Therefore, the instant 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 May 19, 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 "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 copies of his photo identification and birth certificate or passport. On June 14, 2004, the applicant responded to the director's request and submitted copies of his Washington State Driver License and a non-photo identification card; copies of his El Salvadoran birth certificate along with an English translation; and, some evidence in an attempt to establish his qualifying residence and continuous presence in the United States; however, the applicant did not submit any evidence to establish the applicant's eligibility for late registration. The director denied the application on July 23, 2004, because the applicant failed to meet the requirements for TPS late registration, and demonstrate his "residence and continuous physical presence in the United States." The director noted that the evidence submitted did not demonstrate the applicant's residence and presence between the following periods: June 2001 to September 2001, November 2001 to April 2002, September 2002 to June 2003, and August 2003 to March 2004.

The applicant filed an appeal which was received by the NSC on September 15, 2004, after the prescribed period of 33 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the applicant had failed to establish his eligibility for TPS late registration. The director also determined that the applicant failed to establish "residence since February 13, 2001", and continuous physical presence since March 9, 2001. The director, therefore, reaffirmed his previous decision and denied the application on October 27, 2004.

On November 29, 2004, the applicant filed an appeal to the director's on October 27, 2004 decision, which is now before the AAO.

On appeal, the applicant states that [REDACTED] help him with filing his TPS applications and that her office had closed. The applicant also states that the reason his application was filed late was because Ms. [REDACTED] never sent his initial application. The applicant, on appeal, also submits additional evidence in support of his qualifying continuous residence and continuous physical presence in the United States.

The first issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 1998, and his continuous physical presence in the United States since March 9, 2001.

The applicant, on appeal, submits the following documentation: copies of "Claimant Profile Data Inquiry" and "Benefit Payment History" printouts from the Washington State Employment Security Department reflecting that the applicant had received payments from December 11, 2001 to March 22, 2003; an "Old Checks Totals Report" from Zaldivar Landscaping reflecting payroll check dates from April 30, 2001 to May 15, 2001; April 15, 2002 to October 15, 2002; April 18, 2003 to November 7, 2003; and June 25, 2004 to July 9, 2004; and, several handwritten rent receipts from Ana Tapia dated May 1, 2001 to October 3, 2002.

The record also contains copies of the applicant's State of Washington Identification Cards issued on November 4, 2000 and March 17, 2001, as well as his instructional permit issued on January 17, 2001. 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. Therefore, the director's decision to deny the application based on this issue is withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

Although, the applicant states, on appeal, that [REDACTED] did not send his initial TPS application, according to the record, the applicant had filed two TPS applications [LIN 01 159 50304 and LIN 02 257 52150] during the initial registration period; however, both of these applications had been denied. The instant application was filed after the initial registration had closed, and as stated previously, the instant application can only be considered as a late registration.

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. A review of the record of proceedings reflects that the applicant has not submitted any evidence to establish that he has met any of the

criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed, and the applicant remains 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.