



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date:

JUL 05 2007

[WAC 05 148 83171]

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, California 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 record reveals that the applicant filed a late initial TPS application on February 25, 2005, under CIS receipt number WAC 05 148 83171. The director denied that application on August 2, 2006, because the applicant failed to establish his continuous residence and his continuous physical presence in the United States. The director noted that the applicant failed to respond to an April 26, 2006, notice of intent to deny mailed to the applicant's last known address and which was not returned as undeliverable.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States from March 9, 2001 through the date he or she filed the TPS application. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until July 5, 2007, 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

With his TPS application, the applicant submitted a photocopy of an unclear Employment Authorization Card.

On April 26, 2006, the applicant was provided the opportunity to submit evidence establishing his eligibility for TPS, including eligibility for late initial late registration as set forth in 8 C.F.R. § 244.2(f)(2). As noted above, the applicant did not respond to the notice.

On appeal, the applicant states that he relied, to his detriment, on a "Notary" his former representative, who advised him that the applicant was not required to respond to the April 26, 2006, notice of intent to deny. The applicant, in effect, alleges ineffective assistance of his prior representative; however, the applicant does not submit any of the required documentation to support an appeal based on this ground.

Any appeal or motion based upon a claim of ineffective assistance of a representative requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with the representative with respect to the actions to be taken and what representations the representative did or did not make to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of the representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

With his appeal, the applicant submits:-

- A Texas identification card, which expired on May 22, 2005;
- A Social Security card;
- An unclear Employment Authorization Card;
- An unclear El Salvador identification card;
- His El Salvador birth certificate with an English translation;
- His El Salvador passport;
- Three Form W-2, Wage and tax Statement(s) for the years 2001, and 2002;
- Nine rent receipts, with unspecified dates;
- Two paystubs, issued in January 2001, and in April 2003, respectively;
- Two apartment leases, dated August 28, 2004, and September 1, 2005, respectively;
- Eleven money transfer receipts, issued in 2004, 2005, and 2006;
- Five Reliant Energy invoices, dated in 2006; and,
- Two CIS notices, issued in 2005, and 2006.

However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. It is noted that the record contains copies of Form(s) I-765, Application(s) for Employment Authorization, submitted by the applicant on June 6, 1991, November 4, 1991, and May 14, 1992. The forms are marked "TPS" and relate to the applicant's claim of eligibility for Temporary Protected Status under a previous designation for El Salvador. That program has expired and is not related to the current designation for TPS for citizens of El Salvador.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be denied.

In addition, the applicant has failed to establish the requisite continuous residence and continuous physical presence in the United States. For example, the applicant did not provide any evidence for the period from April 2003 through

August 28, 2004. Furthermore, the applicant submitted W-2 Wage and Tax Statements for the years 2001 and 2002, and paystubs for a [REDACTED], who was employed at Ponderosa #1134, Lee's Summit, Missouri. However, the Social Security number shown on the forms is different than that claimed by the applicant on his TPS applications. The applicant also submitted rent receipts showing that an individual named [REDACTED] paid rent for the months of February 1 through December 1; however, neither the year nor the address of the rental unit is shown on the receipts. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to establish his continuous residence and continuous physical presence; however, no such evidence has been provided. The applicant has, therefore, not met the 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 on these grounds must also be affirmed.

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 temporary protected status 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.