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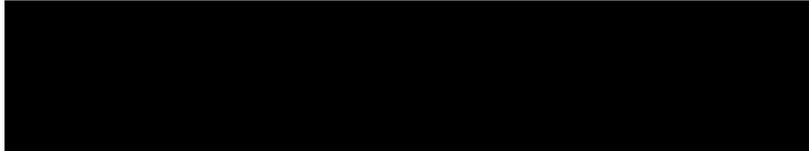
Office: VERMONT SERVICE CENTER

Date:

[EAC 04 066 50684]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), 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 determined that the applicant failed to establish his continuous residence in the United States during the requisite timeframe.

On appeal, the applicant provides a brief statement, copies of previously submitted documentation, and some additional documentation.

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 a Form I-821, Application for Temporary Protected Status, during the initial registration period. That application was denied on April 10, 2003, for abandonment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant was given until May 13, 2003, to file a motion. The applicant did not file a motion.

The applicant filed a subsequent Form I-821 on December 31, 2003. The director denied this second 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. 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.

The applicant's initial Form I-821 was properly filed on September 24, 2001. That initial application was denied by the director on April 10, 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 a subsequent Form I-821 on December 31, 2003. Since the initial application was denied on April 10, 2003, the subsequent 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 who is a national of a foreign state 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.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and 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).

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).

In a notice of intent to deny, dated March 24, 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). The applicant was also requested to submit evidence establishing his continuous residence in the United States from February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The director determined that the applicant in response to the notice of intent to deny, failed to establish his eligibility for late registration. The director also determined that the applicant failed to establish his continuous residence in the United States during the requisite timeframe. The director denied the application on July 29, 2004. It is noted that the director's decision did not cite the additional ground in the notice of intent to deny, which was the applicant's failure to establish his continuous physical presence in the United States during the requisite timeframe. This issue will be addressed beyond the decision of the director.

On appeal, the applicant states that he filed a Form I-765, Application for Employment Authorization, on August 28, 2003, that it was returned to him with a request for additional information; and that he resubmitted the application with the requested documentation.

The applicant provides no documentary 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 decision to deny the application for temporary protected status for this reason will be affirmed.

The remaining issue raised by the director to be addressed in this proceeding is whether the applicant has continuously resided in the United States since February 13, 2001.

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 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 since March 9, 2001. 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 by the Secretary of the Department of Homeland Security, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

As previously stated in the above mentioned notice of intent to deny, dated March 24, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001.

The director determined that the applicant failed to submit evidence to establish his continuous residence in the United States during the requisite timeframe and denied the application on July 29, 2004.

On appeal, the applicant states that he sent the requested information that was needed to process his application.

The applicant submits: a letter from [REDACTED], stating that he had known the applicant since January 2001; an unsigned letter, dated August 3, 2004, from the general manager of Giannini Landscaping stating that the applicant "has consistently been coming to our office for work for the past three years as each season approaches. We are unable to hire him due to insufficient immigration documentation;" receipts from Western Union dated August 4, 2001, August 26, 2001, May 17, 2003, and June 13, 2003; a statement from Chase Bank dated April 21, through May 20, 2004; earnings statements for March 30, 2002, April 6, 2002, and November 22, 2002; copies of a Verizon Account Summary for periods covering July 16 through August 15, 2003, and August 16, 2003; a copy of a postmarked envelope dated July 16, 2001; and, several copies of previously submitted documents.

The additional documentation presented on appeal is not sufficient in establishing the applicant's continuous residence in the United States during the requisite timeframe. The earnings statements, most receipts, the bank statement, and the Verizon Account Summary are dated more than one-year after the onset of the qualifying timeframes. In addition, the letters, without supporting documentary evidence, are not sufficient for meeting the burden of the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has not met the continuous residence criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status for this reason will also be affirmed.

Beyond the decision of the director, for the reasons stated above, the applicant has not established his continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for this reason.

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.