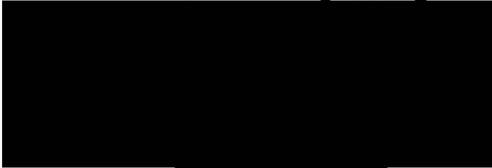




U.S. Citizenship
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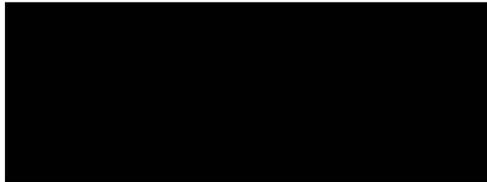
[EAC 06 127 50217]

Office: VERMONT SERVICE CENTER

Date: JUN 05 2007

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that he was eligible for late registration. The director also denied the application because the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant claims his eligibility for TPS.

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 did file an initial application for TPS during the initial registration period. That application was denied on May 3, 2002, because the applicant had not submitted sufficient evidence to establish his residence and physical presence in the United States. The applicant filed a response to the director's denial on June 11, 2002. The director treated the applicant's response as a motion to open because it had been filed beyond the allocated 33 days. The director dismissed the motion to reopen on August 31, 2002, because the applicant had not met the criteria for filing a motion to reopen. The applicant filed a motion to reopen on January 22, 2005, that was dismissed by the service center director on March 10, 2005, because it had been filed late.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 23, 2006. 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 basis for denial must be reexamined. 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 April 16, 2001. That initial application was denied by the director on May 3, 2002. 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 March 23, 2006. Since the initial application was denied on May 3, 2002, 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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 with validity until September 9, 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).

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

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on March 23, 2006.

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.

On April 27, 2006, 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 qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on August 11, 2006.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for

Temporary Protected Status within the initial registration period. 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.

The second 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.

The applicant has provided the following documentation:

1. A copy of a rent receipt dated April of 1999 and bearing the applicant's name as tenant;
2. A letter from [REDACTED] Inc. in which it is stated that the applicant was renting from the company from 2000 through 2003;
3. Copies of earnings statements from [REDACTED] LLC dated February 13, 2001, March 11, 2001, and September 10, 2001, and bearing the applicant's name;
4. A photocopy of the applicant's Virginia Identification card with an issue date of April 28, 2000; and,
5. A translated letter from the pastor of [REDACTED] in which he stated that he has known the applicant as a member of the church since the year 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 11, 2006.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant submitted copies of earning statements from [REDACTED] LLC (see number 3 above) that appear to have been altered. According to the evidence submitted, the applicant's year to date (ytd) amount earned in February of 2001 was \$14, 230.11, and his ytd amount earned in March of 2001 was \$16, 942.63. In contrast, the applicant's ytd earning amount in September of 2001 was only \$609.88. It is also noted that the photocopied earnings statements detailed in No. 3 above appear to have been altered as the original employee name and dates of employment seem to have been covered-over and the applicant's name and dates have been inserted in their place. 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 document in No. 3 above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

There has been no corroborative evidence submitted to substantiate the letter from [REDACTED] Inc. in No. 2 above. The letter from the pastor of [REDACTED] in No. 5 above has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the correspondence is not in affidavit form, and the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. It is further noted that the pastor failed to specify the exact dates of the applicant's membership and attendance.

The remaining evidence is dated prior to the requisite time periods. The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.