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U.S. Citizenship
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Services

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FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

MAY 29 2007

[EAC 03 260 51022]

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, Vermont Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 on the ground that the applicant failed to establish that he was eligible for late TPS registration.

On appeal the applicant requests that his case be reviewed.

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.

El Salvadoran nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on September 17, 2003 – one year after the end of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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 Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On November 13, 2003, the director requested the applicant, who claims to have entered the United States without inspection on July 22, 1998, to submit evidence that he was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. In response the applicant submitted some evidence pertaining to his residence and physical presence in the United States – including two money transfer receipts dated August 13, 2002, and November 15, 2003; two pay statements for employment periods in September 2003 and October/November 2003; and letters from eight acquaintances in the United States, virtually identical in language and length, who state that they have known the applicant since various dates ranging from 1998 to 2002.

On February 17, 2004, the director denied the application on the ground that the evidence submitted in response to the NOID failed to establish that the applicant was eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2).

The applicant filed a timely appeal, but has submitted no further documentation.

Thus, there is still no evidence in the record that the applicant – who filed his TPS application a year after the end of the initial registration period on September 9, 2002 – is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The director's denial of the application on this ground will therefore be affirmed.

Beyond the decision of the director, the AAO determines that the evidence of record is insufficient to show that the applicant has been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). The earliest documentation submitted by the applicant dates from August 2002, and the letters from acquaintances, submitted in November 2003, are not by themselves persuasive evidence of the applicant's continuous residence and continuous physical presence in the United States from the requisite dates in February and March 2001. Accordingly, the application must be also denied on these grounds.

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 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 that burden.

ORDER: The appeal is dismissed.