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20 Mass. Ave., N.W., Rm. 3000
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**U.S. Citizenship
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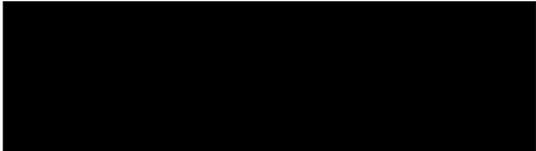


FILE: [REDACTED]
[EAC 07 003 70967]

Office: VERMONT SERVICE CENTER

Date: **NOV 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.

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 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 for TPS because the applicant failed to establish his nationality/identity, and that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence since February 13, 2001, and physical presence since March 9, 2001, in the United States.

On appeal, the applicant asserts his claim of 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 February 26, 2002, due to abandonment, because the applicant failed to report for fingerprinting as scheduled. The applicant filed a motion to reopen on September 5, 2003. The director denied the motion to reopen on September 22, 2004.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 8, 2005. 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.

The applicant filed the current TPS application on October 26, 2006. The director denied the application on January 22, 2007, because the applicant failed to establish his eligibility for late registration. Since the applicant did properly file an application during the initial registration period, the director erred in the 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 April 26, 2001. That initial application was denied by the director on September 22, 2004. 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 subsequent Forms I-821 on November 8, 2005 and October 26, 2006. Since the initial application was denied on September 22, 2004, the subsequent applications cannot be considered as re-registrations. Therefore, these applications can only be considered as late registrations.

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 March 9, 2009, 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 has established his eligibility 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 October 3, 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.

The director determined that the applicant had failed to establish that he was eligible for late registration as is set forth in 8 C.F.R. § 244.2(f)(2), and denied the application on January 22, 2007.

On appeal, the applicant requests that he be considered 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 provided the following documentation:

1. Copies of 1999, 2000, 2001, 2002, and 2003 earnings statements from Cathedral Art Metal Co., Inc.; and,
2. Copies of 1999 earnings statements from Advantage Personnel, Inc.

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

On appeal, the applicant reasserts his claim and submits the following documentation:

3. Copies of 2004, 2005, and 2006 earnings statements from Dimeo Properties, Inc.

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. There has been no corroborating evidence submitted to explain the inconsistencies in the applicant's social security numbers. It is further noted that the record of proceeding does not contain any other evidence (lease agreements, bank statements, income tax documents, letters of employment, medical records, vehicle registrations, etc.) to substantiate the applicant's claim of eligibility for TPS.

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).

The final issue is whether the applicant has provided sufficient documentation to establish his nationality and/or identity.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity

documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; [REDACTED])

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant submitted as evidence a copy of his El Salvadoran passport and a copy of his El Salvadoran passport along with English translations.

The director determined that the applicant had failed to submit evidence of his identity and nationality and denied the TPS application on January 22, 2007.

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

The applicant has submitted sufficient evidence to establish his nationality/identity. The applicant submitted a copy of his El Salvadoran birth certificate with English translations and a copy of his El Salvadoran passport. 8 C.F.R. § 244.2(a)(1). Consequently, the director's decision with respect to this issue will be withdrawn.

Although the applicant has submitted evidence to establish nationality/identity, he has failed to provide sufficient evidence to establish his eligibility for late registration, or his continuous residence and continuous physical presence in the United States.

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.