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U.S. Citizenship
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Services

ML



FILE: [REDACTED]
[WAC 06 165 70148]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 06 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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 Director, California Service Center (CSC), denied the application and the application 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 seeks 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 his qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that he is eligible for late registration as the dependent child on his father's asylum application.

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 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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

The burden of proof is on 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). 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 record reflects that the applicant filed his initial TPS application on March 14, 2006 – almost four years after the close of the initial registration period for Salvadorans. In support of his application, the applicant submitted documentation indicating that he was born on October 1, 1983, to [REDACTED], a TPS registrant with alien registration number [REDACTED]. He also submitted the following photocopied evidence:

1. his Employment Authorization Document (EAD), issued in connection with his father's asylum application, valid from April 12, 2005, to April 11, 2006;
2. proof that his father added him onto his asylum application; and,
3. an affidavit from the applicant's father attesting that the applicant entered the United States on February 6, 2001, and that he supported the applicant financially from February 6, 2001, to April 2004.

On June 27, 2006, the director requested that the applicant provide evidence to establish that he eligibility for late registration under 8 C.F.R. § 244.2(f). The director also requested that the applicant submit evidence

establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following:

4. his New York state photo identification card, issued on May 9, 2005; and,
5. his Social Security card.

On October 9 2006, the director denied the application, finding that the applicant had failed to establish his qualifying continuous residence and continuous physical presence. On appeal, the applicant reasserts his eligibility for TPS based on his relationship to his father.

The record reflects that the applicant's father filed a Form I-589, Application for Asylum and for Withholding of Deportation, in which the applicant was identified as a dependent child, with the California Service Center (CSC) on January 27, 2005. On March 14, 2006, the applicant filed the current TPS application. CIS records confirm that the applicant received EADs from 2004-05 to 2005-06, based on the asylum application filed by his father. On September 1, 2006, the Los Angeles Asylum Office interviewed the applicant's father. The applicant's father withdrew his asylum application on that day and his asylum application was administratively closed. The foregoing record supports the applicant's contention that CIS treated him as an applicant for asylum after he turned 21 until the date the application was withdrawn and administratively closed in September 2006. This treatment is consistent with § 208(b)(3)(B) of the Act, 8 U.S.C. § 1158(b)(3)(B), as amended by the Child Status Protection Act of 2002. Thus, the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), and the applicant filed his TPS application prior to the 60-day period immediately following the termination of the asylum application, as required under 8 C.F.R. § 244.2(g).

The application cannot be approved, however, because a late-filing child of a TPS-eligible parent must meet the same continuous residence and continuous physical presence requirements as all other TPS applicants. The evidence submitted by the applicant fails to establish his qualifying residence and continuous physical presence. The applicant's EADs only establish residence and physical presence from 2004 to 2006. The affidavits submitted have little probative value and can be given little evidentiary weight as they do not provide full information and/or complete details relating to the applicant's continuous residence and continuous physical presence, as required by 8 C.F.R. § 244.9(a)(2)(vi). In addition, the affidavits are not accompanied by evidence to corroborate the applicant's qualifying residence and continuous physical presence. The applicant claims to have entered the United States on February 6, 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The applicant has not submitted sufficient credible evidence to establish the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for TPS on these grounds will 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.

ORDER: The appeal is dismissed.