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U.S. Citizenship
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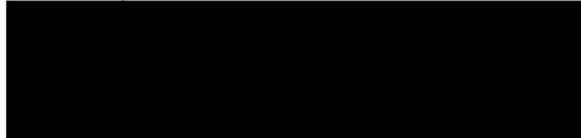
Office: CALIFORNIA SERVICE CENTER

Date: NOV 06 2007

[WAC 03 057 53248]

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, California 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 because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods.

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

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 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 December 11, 2002.

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 February 7, 2007, 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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on June 6, 2007.

On appeal, the applicant states that he initially submitted his I-821, Application for Temporary Protective Status application on September 9, 2002, but that it was returned to him along with his I-765, Application for Employment Authorization, because his I-765 application had been submitted with an incorrect fee. The applicant further states that he received the applications back along with a letter indicating that he should resubmit the applications, with the proper fees no later than November 12, 2002. The applicant submitted copies of the certified mail receipt and the domestic return receipt.

The record also shows that the applicant's TPS application was not received by the California Service Center until September 18, 2002. Although the certified mail receipt shows that the applicant mailed his applications on September 9, 2002, the notice is stamped received by the Immigration and Naturalization Service on September 18, 2002. TPS applications are not considered received when mailed, but rather when actually stamped received by the service center. The record of proceedings shows that the applicant submitted his TPS application with proper filing fee on December 5, 2002. 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 was requested on July 2, 2003, and again on February 7, 2007, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

1. A copy of the applicant's El Salvadoran passport issued to him on May 6, 2003;
2. A letter from [REDACTED], a student teacher, in which he stated that he has known the applicant for two years and three months, and the applicant first came to be taught by him on June 12, 2000; and,
3. A copy of an invoice from American Cinematographer dated January 15, 2000, and bearing the applicant's name as customer.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 6, 2007.

On appeal, the applicant reasserts his claim of eligibility for TPS, and submits the following documentation:

4. Copies of United States Postal Service money order receipts dated September and December of 2002;

5. Copies of the applicant's employment authorization cards dated from July of 2003 through September of 2007;
6. A copy of a Verizon bill dated September 19, 2003, and bearing the applicant's name as customer;
7. A letter from the [REDACTED] Co-Operative Bank in which the customer service representative stated that the applicant has maintained a savings account with the bank since February 2, 2004; and,
8. An undated Money Gram receipt.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The invoice from the American Cinematographer (see number 3 above) is dated prior to the requisite time periods. The letter from [REDACTED] (see number 2 above) is not supported by any corroborative evidence. It is also noted that [REDACTED] indicated in his letter that the applicant studied with him sporadically.

All other evidence submitted by the applicant is dated subsequent to the requisite time periods (February 13, 2001 and March 9, 2001), and therefore, is insufficient evidence to establish the applicant's residence and presence in the United States, as required. 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.