



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: OCT 05 2007

[EAC 04 015 51148]

IN RE:

Applicant:



APPLICATION:

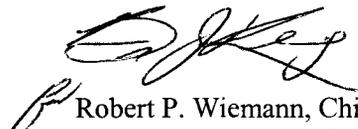
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 (VSC). A subsequent appeal was rejected by the VSC director, and 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 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 September 10, 2004, after determining that the applicant had failed to respond to the Notice of Intent to Deny dated February 25, 2004, to submit evidence to establish: (1) continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application; and (2) that he was eligible for late initial registration.

On November 11, 2004, the applicant filed an appeal from the denial decision. Because the appeal was untimely filed, the director rejected the appeal and accepted it as a motion to reopen. The director reviewed and discussed the evidence furnished on motion and noted that the evidence was insufficient to establish continuous residence and continuous physical presence during the requisite periods. The director determined that after a complete review of the record of proceeding, including evidence furnished with the motion, the grounds of denial have not been overcome; therefore, he affirmed his previous decision, and denied the TPS application on March 3, 2005.

The applicant appealed the director's decision on April 5, 2005. He submits a statement and additional evidence including evidence previously furnished and addressed by the director.

It is noted at this point that the applicant submitted two TPS applications during the initial registration period:

(1) Received on May 22, 2001, under receipt number EAC 01 256 54396, and was assigned file number [REDACTED]. On June 12, 2002, the VSC director rejected the TPS application (Form I-821) and the application for employment authorization (Form I-765) because the forms were not signed by the applicant. He was advised to resubmit the signed forms to the VSC, with proper fee, and to also include the Form I-797 (Notice of Action) with the application package. The applications were received at the VSC on August 14, 2001. The VSC director denied the TPS application on March 28, 2002, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on October 12, 2001. The applicant did not file a motion to reopen within 30 days from the date of the denial.

(2) Received on June 6, 2002, under receipt number EAC 02 225 53055, and was assigned file number [REDACTED]. On June 12, 2002, the VSC director rejected the TPS application (Form I-821) and the application for employment authorization (Form I-765) [assigned receipt number EAC 02 225 53331] because both forms have "photo copied signatures that were traced over in marker," and that an original signature by the applicant is required on both applications. He was granted until October 7, 2002, to resubmit the signed applications and to also submit two color photographs to the VSC office. The applicant was advised that when he has complied with the instructions of the form (Form I-797, Notice of Action), the notice/form must be resubmitted with the requested information. It is noted that this TPS application (Form I-821) is a machine copy of the Form I-821 filed on August 14, 2001, and contained in file [REDACTED] [No. (1) above]. The applications were received at the VSC on June 19, 2002. The VSC director denied the TPS application on June 3, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on September 24, 2002. The applicant did not file a motion to reopen within 30 days from the date of the denial.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application on September 15, 2003.

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). 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).

On appeal, the applicant asserts that he is eligible to receive TPS status because he has been living in the United States since he arrived in December 2000. He further asserts that he was not able to obtain employment information from his former employers where he worked in early 2001. He submits evidence previously furnished and was reviewed and addressed by the director in his denial decision, and will not be readdressed here. He also submits the following:

1. An affidavit dated March 22, 2005, from [REDACTED] indicating that he and the applicant shared an apartment at [REDACTED] Wyckoff, New Jersey, from December 2000 to December 2003. He includes copies of rent receipts, assumed to have been handwritten by [REDACTED] dated from January 1, 2001 through December 1, 2003, inclusive,
2. A letter of employment dated February 7, 2005, from [REDACTED] controller for [REDACTED] Allendale Nursery & Flower Shoppe, Allendale, New Jersey, confirming that the applicant has been working for the company as a full-time employee since April 21, 2003.
3. A copy of a State of New Jersey Provisional Auto License issued to the applicant on December 28, 2004.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. While [REDACTED] (No. 1 above) indicated that the applicant resided with him at his apartment at [REDACTED], there is no evidence in the record to show that the applicant had ever claimed to have resided at that address. The applicant listed his addresses, as early as May 8, 2001, at [REDACTED] Wyckoff, New Jersey, and later at 1 [REDACTED] Hawthorne, New Jersey. It is noted that [REDACTED] signed his affidavit as [REDACTED]. While [REDACTED] and the applicant share a very similar name, he failed to state their relationship. It is also noted at this point that in an attempt to establish his residence and physical presence in the United States, the applicant previously submitted earnings statements

from Ellsworth Partnership, Wyckoff, New Jersey, dated September 14, 2001; September 28, 2001; November 9, 2001; November 23, 2001; December 7, 2001; and December 21, 2001. The earnings statements are under the name of [REDACTED] residing at [REDACTED], Wyckoff, New Jersey. On appeal, the applicant states that in 2001 he worked as a helper for a construction worker but he does not know where he is now; that he worked for McDonalds but that the manager had not returned his calls; and that he also worked as a baker helper with [REDACTED] in which he had submitted a letter. The earnings statements from Ellsworth Partnership are dated during 2001. The applicant had failed to mention, or even hinted, that he worked for that company; therefore, it is possible that the earnings statements belong to [REDACTED] (No. 1 above) rather than to the applicant. The applicant could have submitted a letter of employment from Ellsworth Partnership to establish that he was, in fact, employed with that company.

The inconsistencies of the above statements raises questions of credibility. 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, in fact, 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 discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to submit sufficient credible evidence to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on these grounds will be affirmed.

The record of proceeding confirms that the applicant filed his TPS application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. The applicant neither addressed nor 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 decision to deny the TPS application on this ground will also be affirmed.

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 temporary protected status 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.