



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 05 2007

[EAC 05 218 73025]

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:

[REDACTED]

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 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 continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts the applicant's 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 May 6, 2005.

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 May 18, 2006, 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, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on July 10, 2006.

On appeal, counsel states that the applicant is eligible for late registration because he had an asylum application pending during the initial registration period for TPS, and because the applicant filed his TPS application during an extension of the TPS designation period.

The record of proceeding shows that the applicant's Application for Asylum and Withholding of Removal (Form I-589), and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881) were filed on July 10, 1995, and August 10, 2000, respectively. While counsel is correct in stating that these applications rendered the applicant eligible for TPS late registration while they were pending, the record also reveals that these applications were both dismissed on November 26, 2003. The applicant had 60 days from the dismissal date of November 26, 2003, to file his TPS application in order to qualify for late registration. (See 8 C.F.R. § 244.2(f)(2) and (g)). However, the record shows that the applicant filed his TPS application on May 6, 2005, which is more than 1 year after the expiration or termination of the qualifying condition.

The applicant did not file his application during the allotted time-period following the termination of the condition that made him eligible for TPS late registration. 8 C.F.R. § 244.2(g). 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 record of proceeding shows that the applicant submitted as evidence, copies of handwritten receipts from CMD Brokerage Insurance for the applicant's payments to the company between the years 2001 and 2006, and copies of his Sprint bills dated between 2003 and 2004.

The director denied the TPS application on July 10, 2006, after determining that the evidence provided by the applicant was insufficient to establish his continuous residence and continuous physical presence in the United States during the year 2001, and that there had been no collaborative evidence submitted to substantiate the applicant's claim.

On appeal, counsel asserts the applicant's eligibility for TPS, and submits the following: copies of the applicant's tax records for the 1999 through the 2004 tax years; employment authorization cards (EAD) issued to the applicant from 1995 to 2004; insurance documents from Clarendon National Insurance Company dated 2001 through 2006; worker's compensation claim forms and related documents from the applicant's accident dated July 29, 2004; and a medical statement from Sunrise Medical Laboratories to the applicant dated April 25, 2001. The record also contains documentation relating to the applicant's asylum and NACARA claims dated from 1988 to 2003.

The applicant has 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. 8 C.F.R.

§ 244.2(b) and (c). Consequently, the director's decision with respect to this issue will be withdrawn. However, as has been previously determined, the applicant's appeal will be denied because he has failed to establish his eligibility for late registration.

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.