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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Nebraska Service Center

Date:

SEP 20 2007

[LIN 03 271 50837]

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, Nebraska 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 he was eligible for late registration.

On appeal, counsel, asserts the applicant's 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 [LIN 01 159 51354] for TPS during the initial registration period. That application was denied on August 17, 2001, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant did not file an appeal within the prescribed timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 03 072 50478] on December 30, 2002. The director denied that application on June 17, 2003, 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. On July 2, 2003, counsel filed an appeal which is being addressed under separate cover.

The applicant filed this TPS application [LIN 03 271 50837] on September 16, 2003. The director denied this application on February 12, 2004, because the application failed to establish his eligibility for TPS late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

The record of proceedings confirms that the applicant filed the current application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 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.

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).

On November 24, 2003, the applicant was requested to submit evidence to establish his eligibility for TPS late registration. The applicant was also requested to submit photo identification. In response, counsel submitted documentation in support of the applicant's residence in the United States. The director denied the application on February 12, 2004, because the applicant failed to establish his eligibility for TPS late registration.

On appeal, counsel states that she had responded to the director's Notice of Intent to Deny on December 22, 2003, and that the TPS applications, receipt numbers: LIN 03 271 50837 and LIN 01 159 1354, are still pending. Counsel also provides a copy of the CIS website information regarding the status of the latter application receipt number.

As stated previously, the record reveals that the applicant filed an initial application [LIN 01 159 51354] for TPS during the initial registration period. That application was denied on August 17, 2001, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. The record also reflects that the applicant filed a second TPS application [LIN 03 072 50478] on December 30, 2002. The director denied that application on June 17, 2003, because the applicant had failed to establish his eligibility for filing under the provisions of late registration.

Counsel, on appeal, also refers to the current TPS application [LIN 03 271 50837] which was denied on February 12, 2004, because the applicant failed to establish his eligibility for TPS late registration. However, counsel has not submitted any evidence to establish that the applicant 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.

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.