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FILE:



Office: VERMONT SERVICE CENTER

Date:

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IN RE:

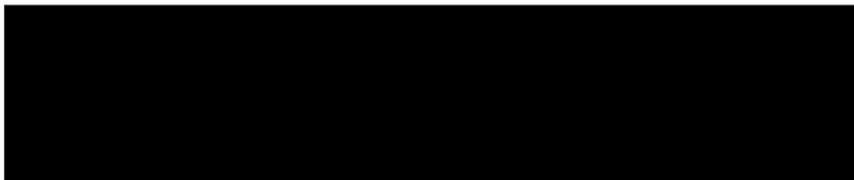
Applicant:



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 Vermont Service Center. Any further inquiry must be made to that office. If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is the spouse of a TPS-eligible alien and is therefore eligible for late initial registration.

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 as 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 section 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 conditions described in paragraph (f)(2) of this section.

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.

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 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 granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on January 21, 2008. The applicant filed his initial TPS application on June 10, 2001. The Director, Vermont Service Center denied that application on December 11, 2002 because the applicant failed to establish his continuous residence since February 13, 2001. On November 29, 2002, the applicant filed a motion to reopen the decision. On July 24, 2003, the Director, Vermont Service Center dismissed the motion.

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 United States Citizenship and Immigration Services (USCIS). 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 record of proceeding confirms that the applicant filed this 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 the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On June 9, 2008, the applicant was provided the opportunity 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 continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The applicant also stated that he was the spouse of a TPS-eligible alien. The director determined that the applicant was not married during the initial registration period, and consequently did not establish his eligibility for late initial registration. Therefore, the director denied the application.

On appeal, counsel states that the applicant is eligible for late initial registration because he “is” the spouse of a TPS-eligible alien. Counsel also contends that the director incorrectly indicated in his decision that it was required that the applicant “was” the spouse of a TPS-eligible alien. According to counsel, this would mean that an individual that was previously married to a TPS-eligible alien would remain eligible for late initial registration. In addition, counsel states that requiring a current marital relationship is both logical and fair and furthers the established goal to promote family unification. Contrary to counsel’s contention, an individual who was previously married to a TPS-eligible alien had 60 days after the termination of the marriage in which to submit a late initial registration period. However, while USCIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period, the applicant is required to have been married during the initial registration period. Furthermore, these regulations do not relax the requirements for eligibility for TPS despite the applicant being married to a TPS-eligible alien; the applicant is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). As will be discussed below, the applicant has failed to meet those requirements as well.

The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant’s failure to file his TPS application within the initial registration period. The applicant has not submitted sufficient 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 failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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.

In support of his TPS application, the applicant submitted the following:

1. Copies of the applicant’s birth certificate with English translation, the applicant’s Salvadoran passport and identification document card “Cedula”, and his Social Security Card.
2. Copies of a California License and Certificate of Marriage issued on October 14, 2005 and the Social Security Card of the applicant’s wife.
3. Copies of 2001-2006 Form W-2, Wage and Tax Statements, and tax returns.
4. Statements from [REDACTED] and [REDACTED] and a letter confirming receipt of a Social Security Card application dated July 6, 2001.
5. Copies of receipts from [REDACTED] dated May 16, 2001, airline tickets dated May 19, 2002, and a bill from MCI dated April 18, 2002, and an unreadable receipt from MoneyGram.

6. Copies of Earnings Statements from [REDACTED] Landscaping dated from April 19, 2002 to May 25, 2007.

As stated above, the applicant was requested on June 9, 2008 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted a letter from [REDACTED]. The applicant also resubmitted evidence previously provided.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits copies of a hand-written rent receipt dated November 1999, and MoneyGram receipts dated January 8, 2001, and February 22, 2001.

The birth certificate and passport establish the applicant's identity and nationality. In her initial statement, [REDACTED], the company Controller stated that the applicant was employed by U.S.A. Industries from January 17, 2000 to August 3, 2001. However, in the letter submitted in response to the request for additional information, [REDACTED] stated that the applicant was employed by U.S.A. Industries from January 5, 2001 through March 2, 2002. These discrepancies have not been satisfactorily explained. 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). In addition, these statements have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that [REDACTED] did not indicate the applicant's duties of employment, nor are her statements in affidavit form.

[REDACTED] stated that he has known the applicant since 1999. However, this statement also has little evidentiary weight or probative value. The statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Similarly, the hand-written rent receipts and MoneyGram receipts are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The remaining evidence provided by the applicant is dated subsequent to the dates to establish continuous residence and continuous physical presence. Consequently, this evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds 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.