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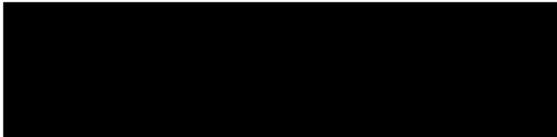
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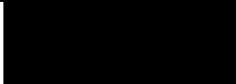
U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 07 010 77522]

Office: VERMONT SERVICE CENTER

Date: FEB 01 2008

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 claims to be a 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. The director also denied the application because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that he has resided in the United States since before February 13, 2001.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid 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 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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for El Salvadorans was March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on September 10, 2006. 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 June 12, 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 identity as well as his qualifying continuous residence and continuous physical presence in the United States. The applicant asserted that prior to his marriage to his current wife, [REDACTED] he resided with her since April 2001. The applicant provided a copy of his current spouse's employment authorization card, a copy of his amended petition for divorce filed on March 11, 2002, and two receipts dated May 1, 2001, and September 20, 2002, addressed to the applicant and his current spouse.

The director determined that the applicant had failed submit evidence of his divorce from his first wife, and failed to establish that he was a spouse of an alien currently eligible to be a TPS registrant during the initial registration period. The director concluded that the applicant had failed to establish he was eligible for late registration and denied the application on August 8, 2007.

On appeal, the applicant asserts that he resided with his former wife until April 2001. The applicant states that he has resided with his current wife, [REDACTED], since April 2001. The applicant submits the following:

- An additional copy of an amended petition for divorce filed on March 11, 2002. The petition indicates the applicant and his former wife were married on November 11, 1995 and ceased to live together on or about August 2001.
- A copy of a final decree of divorce rendered on February 14, 2003.
- A copy of his June 29, 2003, marriage license.

The regulation at 8 C.F.R. § 244.2(f)(2)(iv) clearly states that the applicant has to be a *spouse* of an alien currently eligible to be a TPS registrant. The applicant has not provided any evidence to establish that his former wife was a TPS registrant. The applicant's current wife's TPS eligibility has no bearing in this matter because they were not married during the initial registration period. As such, the applicant does not meet the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv).

The applicant also does not meet the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), as the record reflects that the applicant's Form I-589, Application for Asylum and Withholding of Removal, filed on November 4, 1994, was no longer pending as he failed to appear for his hearing scheduled on August 25, 1998, thereby abandoning any claim for relief from removal. On September 24, 1998, an immigration judge ordered the applicant removed *in absentia* to El Salvador.

The applicant has not submitted any evidence to establish that he has met any other 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, or his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on June 12, 2007 to submit evidence establishing his qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. A review of the documents submitted throughout the application process consist of: 1) a Texas driver license, which expired on August 5, 2001; 2) two receipts dated May 1, 2001, and September 20, 2001. The applicant, in response, provided the following documentation; 3) a banking statement for the period of February 14, 2006, through March 13, 2006; 4) his son's November 25, 2004, birth certificate; 5) two receipts dated February 6, 2001, for electronic filing of Form 1040; 6) an annual escrow review prepared March 13, 2001, from Well Fargo Home Mortgage, Inc., for the period February 2001 through April 2001; and 7) wage and tax statements and Form 1099-misc 2000 and 2005.

The director, in denying the application, determined that the documents submitted were insufficient to establish his eligibility for TPS.

The evidence submitted by the applicant only establishes his residence and physical presence in the United States from February 13, 2001, through April 2001, and since June 29, 2003. There is a significant period of time, namely May 1, 2001, through June 28, 2003, that has not been accounted for. The applicant 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 TPS on these grounds will also be affirmed.

Finally, the applicant was requested to submit evidence of his identity. Although, the applicant submitted his El Salvadoran birth certificate along with the required English translation, the documents were not accompanied by a photo identification, such as a passport or national identification document to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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 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.