



U.S. Citizenship  
and Immigration  
Services

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*MI*

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

Date:

**JAN 02 2008**

[EAC 07 002 81162]

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.

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 (AAO) 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 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, and failed to provide the final court disposition for an arrest on his criminal record.

On appeal, the applicant asserts through counsel that he is eligible 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 designated by the Attorney General 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. 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application on October 2, 2006.

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 record of proceedings confirms that the applicant filed his application after the initial registration period had closed. 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 February 28, 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 qualifying continuous residence and continuous 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 he was eligible for late registration and denied the application on April 17, 2007. On appeal, the applicant asks that CIS approve his application.

The applicant asserts through counsel that he is eligible to file a late initial registration because he had a prior application during the initial registration period. The applicant did file an application during the initial registration period but that application was denied on March 3, 2004. The applicant filed this application subsequent to the initial registration period, and must therefore establish eligibility to file a late initial application. Filing an application for TPS during the initial registration period does not constitute relief from removal or any other form of exception listed under 8 C.F.R. § 214.2(f)(2)(i)-(iv). In addition to being legally distinguishable from the late registration criteria, allowing applicants to file a late registration application based on having a prior application pending during the initial registration period would allow an alien to perpetually file, abandon, or have the application denied, and re-file applications for TPS in order to receive interim benefits without ever having actually received TPS designation. The regulations are clear, and counsel's interpretation of the late registration provisions is without legal merit.

The applicant has not submitted any evidence to establish that he has met any of the 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 February 28, 2007, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not indicate that the applicant filed a timely response.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant asks that CIS approve his application.

The tax returns submitted by the applicant are not certified, and the AAO cannot determine if they are authentic or contemporaneous with the dates listed. The documentation submitted does generally corroborate the applicant's presence from June, 2001, through the date of filing. However, the only evidence covering the required period periods prior to June, 2001, is a letter from [REDACTED] of New England, dated May 18, 2007, asserting the applicant was employed with the company from February 13, 2001; and a letter from [REDACTED]

asserting the applicant resided at the [REDACTED] from February 23, 2001 through October 29, 2001. As noted by the director, these letters fail to provide the specific information necessary to constitute an employer letter or affidavit, and do not articulate that the applicant was resident in the United States prior to February 13, 2001, (the letter only reference February 23, 2001) or continuously physically present from March 9, 2001, to June, 2001. In addition, neither letter is supported or corroborated by other documentation in the record, such as leases, utility bills, pay stubs or other employment records. Without other corroborative evidence, these documents are not sufficiently probative or credible to establish the applicant's continuous residence and physical presence for the gap in the required periods.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the required periods. 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 TPS on these grounds will also be affirmed.

The final issue in this matter is the applicant's failure to provide the final court disposition of an arrest listed on his criminal record. An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reveals the following offenses:

1. On July 6, 2001, the applicant was arrested for Shoplifting by Asportation, by the Braintree Police Department in Massachusetts.

Pursuant to a letter dated February 28, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to this director's request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on September 8, 2006.

Documents submitted by the applicant indicate that he completed a period of pre-trial probation for the charge listed above, and the charge was dismissed on February 3, 2004. The AAO would note that in any event a single misdemeanor conviction would not render the applicant ineligible for TPS.

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.