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U.S. Citizenship  
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Services

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FILE:



[EAC 07 006 76363]

Office: VERMONT SERVICE CENTER

Date: JAN 23 2008

INRE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

  
Robert P. Wilemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vennont Service Center (VSC), denied the initial application. The director denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the appeal will be sustained.

The applicant is a citizen of EI Salvador who seeks 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 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, the applicant asserts that he did not initially apply for TPS because he was out of status and was afraid that, if he did apply, he would be deported. The applicant submits additional documentation in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 c.P.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.P.R.. § 244.4; and
- (t)
  - (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 parole; 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.P.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.P.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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.P.R. § 244.2(f)(2) above.

The burden of proof is on 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.P.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.P.R. § 244.9(b).

The record reflects that the applicant filed his initial TPS application on April 10, 2001 -- during the initial registration period for Salvadorans. On February 28, 2002, the director denied the application as abandoned due to the applicant's failure to report for fingerprinting. The director informed the applicant that he had 30 days to file a motion to reopen. The applicant filed a motion but it was rejected for lateness. A subsequent appeal was also rejected.

During subsequent re-registration periods, the applicant filed applications that were accepted under the late filing provisions of 8 C.P.R. 244.2. In support of these applications, the applicant submitted additional evidence relating to his qualifying continuous residence and continuous physical presence.

On, September 5, 2006, the applicant filed the current application. On February 7, 2007, the director requested that the applicant submit evidence that he qualified for late initial registration; additional evidence of his qualifying continuous residence and continuous physical presence; and, a copy of a national photo identity document. On, April 13, 2007, the director found that the applicant had established his identity and nationality, but denied the application for failure to establish eligibility for late registration and failure to establish his qualifying continuous residence and continuous physical presence. On appeal, the applicant submits additional documentation.

The record contains the following photocopied documents

- The applicant's birth certificate with accompanying translation;
- The identification page of his Salvadoran passport;
- A copy of his Georgia driver's license, issued on September 13, 2000;
- A Gigante Express envelope addressed to the applicant at the same address listed on his Georgia driver's license;
- A work letter from \_\_\_\_\_
- Three cancelled checks, made out to the applicant, from \_\_\_\_\_ ;
- Four statements from individuals attesting to his presence in the United States since 2001; and,
- various credible documents showing residence and physical presence from 2002 to the present.

The Georgia bill and the envelope show residence and physical presence immediately prior to and during the initial registration period. They both contain the same address in Snellville, Georgia. The cancelled checks and the letter from \_\_\_\_\_ indicate that the applicant worked for that employer from November 2000 to July 2002. \_\_\_\_\_ issued the employment letter. According to \_\_\_\_\_, \_\_\_\_\_ Trucking Service employed the applicant as a driver beginning in November 2000. The three cancelled checks corroborate the letter from Rene \_\_\_\_\_ a. One check was submitted with the initial application in 2001, and two others were submitted in response to the director's request for further evidence in 2007. But all the checks are from the same bank account, and are in sequential order, consistent with the dates on them. Little, if no weight can be given to the four letters from individuals who know the applicant personally as they are not supported by any other corroborative evidence, and lack sufficient detail. The additional documentation includes T-Mobile phone bills, bank account statements, car insurance billing statements, life insurance statements, and credit card bills from Macy's, Hecht's, and Sears for the years 2002, 2003, 2004, 2005, and 2006.

Together, these documents establish that the applicant continuously resided in the United States since February 13, 2001. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). The applicant has submitted sufficient evidence to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). The applicant has satisfied the requirements for establishing his continuous residence and continuance physical presence and his identity and nationality. The applicant's passport establishes his identity and his Salvadoran nationality. The record contains clear results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI).

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The appeal is sustained. The initial application is reopened, *sua sponte*, and the application is approved.