



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center

DATE: **MAY 23 2008**

[EAC 03 061 52557]

INRE:

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.

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 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 record reveals that the applicant filed his initial TPS application on October 10, 2002, under Citizenship and Immigration Service (CIS) receipt number EAC 03 061 52557. The director denied that application on June 4, 2003 due to abandonment because the applicant failed to respond to the director's request for additional evidence. The applicant filed a subsequent motion to reopen on August 22, 2003, which was denied on July 19, 2004, after the director determined that the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his continuous residence and physical presence in the United States during the requisite periods. The applicant has now submitted an appeal.

On appeal, the applicant states that he is from El Salvador and entered the United States before February 13, 2001; therefore, he is eligible to apply 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 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on October 10, 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.

On March 26, 2004, 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 July 19, 2004.

On appeal, the applicant states that he had filled out and mailed his TPS application to CIS on August 31, 2002. The applicant further states that he does not understand the receipt notice sent by CIS, showing that his TPS application was received at the Service Center on October 10, 2002. He also asks CIS to read the date on his envelope and take that as his priority date for the 2002 renewal period.

It is noted in the record of proceeding that the date stamped on the envelope that the applicant used to mail his initial TPS application was October 8, 2002, with the U.S. Postage paid in the amount of \$4.65, at the United States Postal Service in Silver Spring, Maryland.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. It is noted that with the August 22, 2003 motion, the applicant submitted copies of a Form 1-821, Application for Temporary Protected Status, dated April 9, 2001, and a Form 1-765, Application for Employment Authorization, dated April 9, 2001, which he claims he filed with Immigration and Naturalization Service (INS), now CIS, in April 2001. However, there is no evidence that the applicant filed any TPS application prior to the current application filed on October 10, 2002. The applicant has not submitted any 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 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, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. Copies of receipts from Gigante Express dated April 22, 2001 and May 7, 2001;
2. A copy of a United States Postal Service Customer Receipt dated April 13, 2001;
3. A copy of a receipt from Urgente Express International Courier dated March 19, 2001;
4. A copy of a money transfer receipt from Gavilan Express dated April 15, 2001;
5. A copy of a Request for Employee Information from the Social Security Administration dated October 15, 2001; and,
6. Copies of money transfer receipts from Western Union dated in the year 2002.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States 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). The applicant claims to have lived in the United States since March 20, 1999. It is reasonable to expect that he would have some other type of contemporaneous evidence to support these claims. Consequently, the director's decision to deny the application for TPS 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 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.