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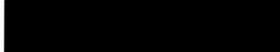
U.S. Citizenship  
and Immigration  
Services

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FILE:



[WAC 03 075 55602]

OFFICE: Vermont Service Center

DATE: NOV 03 2008

IN RE:

Applicant:



APPLICATION:

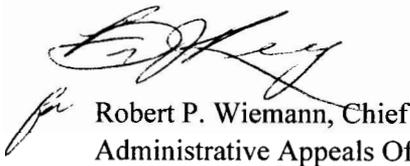
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont Service Center. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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 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 asks CIS to reconsider his case and grant him TPS and employment authorization.

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 January 3, 2003. 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 11, 2008, 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 21, 2008.

On appeal, the applicant states that he has been filing for TPS registration since his very first application. He further states that he is not filing a late initial registration; he has been registering since TPS began.

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. 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, or 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 his Employment Authorization Document (EAD) cards;
2. A copy of his driver's license issued in the state of Iowa on June 21, 2006;
3. A copy of his Social Security card;
4. A copy of his birth certificate and an English translation;
5. A copy of an affidavit dated September 7, 2002, from [REDACTED], stating that the applicant had lived with her at [REDACTED], Compton, CA 90220, since January 10, 2001;
6. A copy of an insurance card from Blue Cross Blue Shield indicating an effective date on January 1, 2008;
7. A copy of a UFCW Union Privilege Card indicating the applicant has been a member since October of 2006;
8. Copies of credit cards from Wells Fargo;
9. A copy of an affidavit dated January 20, 2008, from [REDACTED], attesting that the applicant had lived with him at [REDACTED], Compton, CA 90220 from January 1, 2001 to July of 2003;
10. A copy of an affidavit of witness dated February 1, 2008, from [REDACTED], attesting that he has known the applicant for 8 years in Los Angeles;
11. A copy of an affidavit of witness dated January 15, 2008, from [REDACTED] stating that he has known the applicant for 8 years;
12. Copies of Form(s) 1040, U.S. Individual Income Tax Return for the years 2001, 2002, 2003, 2004, 2005, 2006, and 2007; and,
13. Copies of Form(s) W-2, Wages and Tax Statement for the years 2003, 2004, 2006, and 2007.

Two of the affidavits submitted in response to the director's NOID state only that the writers have "known the applicant for 8 years," and thus are not sufficiently relevant to support the applicant's assertions of eligibility. Even in the light most favorable to the applicant these letters lack sufficient detail and context, and do not cover the entire required period. While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as

letters “may” be accepted in support of the applicant’s claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant’s qualifying residence or physical presence in the United States. Moreover, it is noted that the copies of the Form(s) 1040, U.S. Individual Income Tax Return submitted for the years 2001 and 2002 are not certified, and the AAO cannot determine if they are authentic or contemporaneous with the dates listed. The applicant claims to have lived in the United States since January 1, 2001, it is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim. However, no such evidence has been provided.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or 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 TPS on these grounds will also be affirmed.

Beyond the decision of the director, it also is noted that the applicant has failed to establish his national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instructions on the forms and as may be requested by CIS. It also provides that acceptable evidence of nationality are:

- i. Passport;
- ii. Birth Certificate accompanied by photo identification; and/or
- iii. Any national identity document from the alien’s country of origin bearing a photo and/or fingerprint.

In this case the applicant has only submitted a birth certificate. This is not sufficient to establish national identity.

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.