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U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 07 363 77472]

OFFICE: Vermont Service Center

DATE: OCT 02 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:

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 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 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. The director further noted that the applicant failed to establish his nationality and identity.

On appeal, counsel states that the applicant was TPS eligible and should be granted TPS. Counsel further states that additional evidence and a brief will be submitted to the AAO within 30 days. However, to date, no additional evidence or brief has been submitted. Therefore, the record must be considered complete.

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 September 3, 2007. 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 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 as well as evidence establishing his nationality and identity.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 4, 2008.

On appeal, counsel states that the applicant is eligible for late registration because he was married to a TPS registrant. Counsel also submits a copy of the applicant's marriage certificate and a copy of the applicant's wife's EAD card.

The applicant's marriage certificate indicates he was married on May 1, 2007, to an alien currently eligible for TPS. While the evidence of record confirms that the applicant's wife was granted TPS, the record also shows that the applicant was not married until after the initial registration period ended on September 9, 2002. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the initial registration period, he is not eligible for late registration. 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, counsel reasserts the applicant's eligibility for TPS and submits the following documentations:

1. A copy of an earnings statement from Odyssey Foods of New Jersey, Inc., with check dated January 9, 2001;
2. A copy of a statement of a joint bank account of the applicant and his wife from Wachovia for the period from September 24, 2007 to October 15, 2007;
3. A letter from [REDACTED] of Professional Health Care Services of Lawrenceville, P.A., Lawrenceville, NJ, dated February 21, 2008, stating that she has known the applicant for 10 years;
4. A translated letter from Carmela, dated January 2, 2002, thanking the applicant for sending her money;
5. A translated letter from [REDACTED] dated January 3, 2002, thanking the applicant for sending him money;
6. A translated letter from [REDACTED] dated October 13, 2000;
7. A copy of the applicant's birth certificate and an English translation;
8. Copies of the applicant's Salvadoran passports, issued in New York on July 14, 2003 and in New Jersey on April 11, 2008;
9. A copy of the applicant's marriage certificate; and,
10. Copies of the applicant's wife's EAD cards.

The applicant asserted on appeal that he was eligible for TPS because his spouse had been granted TPS. However, while CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. In addition,

the documents submitted are not sufficient evidence since the affidavits are not accompanied by any corroborating documentation and the remainders of the documents do not encompass the entire timeframe specified. The applicant claims to have lived in the United States since September 5, 1999, it is reasonable to expect that he would have some other type of contemporaneous evidence to support his claim. However, no such evidence has been provided. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by church, unions, or other organizations of the applicant's residence as specifically described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The applicant has not submitted sufficient 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.

Finally, the record contains a copy of the applicant's Salvadoran passport; therefore, the director's decision to deny the application on this ground will be withdrawn.

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.