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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] [LIN 03 034 51511] Office: Nebraska Service Center Date: APR 0 8 2004

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: 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 indicated on his application that he entered the United States in October 1998, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish that he had maintained his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States.

On appeal, the applicant stated that he had previously submitted proof that he has continuously resided in the United States since October 1998.

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 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.F.R. § 244.4; and

(f) (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 reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1989, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1988.

(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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 27, 2002.

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 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).

On March 27, 2003, 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 residence since February 13, 2001, and physical presence since March 9, 2001, in the United States.

In response, the applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States:

1. Copies of his Salvadoran birth certificate along with an English translation.
2. A letter dated April 1, 2003 from Mr. Ciro M. Lombardi, President and Manager of Kenneth's Construction, Co., who stated that the applicant had worked for his company as an independent contractor since August 10, 2001. Mr. Lombardi stated that the applicant performed three home demolition jobs during the years 2001 and 2002.
3. Copies of his pay-stubs dated February 12, 2001 and March 13, 2001.
4. A copy of a hand-written delivery receipt dated January 20, 1998.
5. A copy of a hand-written receipt dated May 24, 1999, from the Clerk of the Circuit Court, Waukegan, Illinois.
6. A copy of proof of his insurance from American Family Insurance for the time period from October 24, 1998 to April 24, 1999.
7. Copies of receipts from Gigante Express, Inc., dated March 14, 1999 and April 21, 1999.
8. A copy of his citation for operating an uninsured vehicle on October 23, 1998 from the Waukegan Police Department.
9. A copy of a receipt for a cash payment dated November 23, 1998 from the Clerk of the Circuit Court, Lake County, Illinois.
10. Copies of the biographical pages of his Salvadoran passport issued on June 2, 1999 in Chicago, Illinois.

The director determined that the applicant had failed to establish that he was eligible for late registration, and that he had failed to establish that he had maintained residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The director denied his application on June 19, 2003.

On appeal, the applicant reasserted his claim that he had maintained continuous residence in the United States since October 1998 and resubmitted copies of Nos. 3 through 10 as detailed above.

The employment letter from Mr. Ciro M. Lombardi as detailed in No. 2 above has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, nor does it provide the address where the applicant resided during the period of his employment. Further, the pay-stubs detailed in No. 3 above do not cover the entire period of eligibility as provided by regulation. The documents detailed in Nos. 2 and 3 may suggest that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish his residence since February 13, 2001, and physical presence since March 9, 2001, up to the filing date of his application.

The applicant did not submit sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his 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 other issue in this proceeding is whether the applicant was 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 or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On appeal, 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 <u>any</u> evidence to establish that he has met <u>any</u> of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status on this ground also will be affirmed.

An alien applying for temporary protected status 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.