U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 27 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 claims to be 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 had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to establish that he was eligible for late registration. In addition, the director states that "to further justify the Service's reason for denial on cause; please note that you stated an entry date into the United States in January of 2001, which is contradicting with the issue date/place of your passport, [redacted] March 12, 2002)."

On appeal, the applicant provides a brief statement and additional documentation in support of the appeal. It is noted that the record contains a G-28, Notice of Entry of Appearance as Attorney or Representative, from [redacted] of the "Inmigracion Universal, Co.," in Guttenberg, New Jersey. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list either [redacted] or Inmigracion Universal, Co., in Guttenberg, New Jersey as recognized entities, nor has [redacted] established that she meets the criteria for representation under 8 C.F. R. § 292. As the applicant signed the appeal Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), the applicant will be considered self-represented.

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.

(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 first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed his application on March 10, 2003.

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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on March 10, 2003, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 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).

In a notice of intent to deny, dated April 10, 2003, the applicant was requested to submit evidence of his eligibility for late registration. The applicant was also requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes.

The director found that the applicant had not demonstrated that he met any of the eligibility requirements to qualify for late registration. The director also found that the applicant did not establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director denied the application on July 7, 2003.

On appeal, the applicant in an affidavit dated April 30, 2003, states "I applied late because I applied under the late registration period for Salvadorians." The applicant did not provide any documentary evidence to establish his eligibility for late registration.

No documentary evidence has been presented on appeal to establish that the applicant has met the requirements for late registration as described in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the TPS application for this reason will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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.

As previously stated, in a notice of intent to deny dated April 10, 2003, the applicant was requested to submit evidence of his continuous residence and his continuous physical presence in the United States during the required timeframes. The director, in his decision dated July 7, 2003, found that the applicant had not submitted sufficient evidence to establish these two issues and, therefore, denied the application.

On appeal, the applicant, in response to the director's discussion regarding his entry date (January 2001) listed on his TPS application contradicting the date and place of issuance (March 12, 2002) noted in his passport states, in pertinent part, that:

> I want to say [to] you that: my passport has date on 03-12-2002 because I left this document ready in my country and my mother one year later pick up and sent to me with the 'viajera.' I have this [sic] documents enclosed since 2001 but they have a social security number bad, and I don't want that you see this.

The applicant submits: the above mentioned affidavit dated April 30, 2003, in which he states that he has been living in the United States since January of 2001; two earnings statements from Kuffo Construction, Inc. in West New York, New Jersey for the pay periods January 15, 2001 to January 21, 2001, and March 5, 2001 to March 11, 2001; a UCEDA Registration, dated July 28, 2002; an earnings statement from Safavieh in Secaucus, New Jersey for the pay period ending July 27, 2002; and, three generic rent receipts dated December 1, 2000, January 1, 2001, and March 3, 2001.

The record contains no substantial documentary evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001, and that he has been continuously physically present in the United States since March 9, 2001. The majority of the documentation presented does not cover relevant timeframes (February 13, 2001, and April 2001 to July 26, 2002). Consequently, the director's decision to deny the application for temporary protected status for these reasons 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.