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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

MAY 08 2008

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:

[REDACTED]

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, 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 his nationality, and that 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.

On appeal, counsel provides additional documentation in support of the appeal.

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 October 22, 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on October 22, 2002, 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 August 14, 2003, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. The applicant was also requested to submit evidence to show that he had been continuously residing in the United States since February 13, 2001, and that he had been

continuously physically present in the United States since March 9, 2001, to the date of the filing of the application.

The director found that the applicant, in his response to the intent to deny, submitted evidence “that did not relate to the time periods” indicated in the intent to deny. The director denied the application on November 13, 2003.

On appeal, counsel states “this is not a late initial registration, but a TPS extension.”

The applicant’s Form I-821, Application for Temporary Protected Status, filed on October 22, 2002, indicates in Part 1 that this is the applicant’s first application to register for TPS. If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. The record does not indicate that the applicant was previously granted TPS. Consequently, this application can only be considered as a late registration, as the initial registration period for El Salvadorians was from March 9, 2001 through September 9, 2002.

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 second issue raised by the director to be addressed in this proceeding is whether the applicant has established his nationality.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

The applicant claims on the application that he is a citizen of El Salvador. On appeal, counsel provides: a photocopy of the applicant’s birth certificate; a photocopy of the applicant’s Employment Authorization Card; a photocopy of the applicant’s California driver’s license; and, a photocopy of the applicant’s social security card. The applicant has provided no additional documentary evidence such as a passport, a birth certificate accompanied by photo identification or any national identity document from his country of origin containing his photograph and fingerprint. The applicant has not established his nationality; therefore, the director’s decision to deny the application for temporary protected status 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.

In support of his application, the applicant provided no documentary evidence to demonstrate his continuous physical presence and his continuous residence in the United States during the required timeframes.

On appeal, counsel provides photocopies of two envelopes addressed to the applicant at his address in the United States listed on his TPS application. The dates on the envelopes are displayed as "3 ENE. 2000" and "5 ENE. 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 two envelopes, without additional supporting documentary evidence to cover the remaining timeframes, are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.