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



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

MAY 25 2005

[LIN 03 224 50031]

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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 determined that the applicant failed to submit sufficient evidence to establish that he: (1) had continuously resided in the United States since February 13, 2001; (2) had been continuously physically present in the United States since March 9, 2001; and (3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he is submitting more evidence to establish his "time and period in the United States."

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 record reveals that the applicant did file an initial application for TPS during the initial registration period on August 14, 2002 (LIN 02 262 51003). That application was denied on February 3, 2003, based on abandonment because the applicant had failed to respond to a request for evidence. The applicant appealed the director's decision. On April 15, 2003, the director rejected the appeal because the applicant failed to provide any evidence to overcome the denial when he filed his appeal.

The applicant filed a subsequent Form I-821 application on July 16, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant has no approved Form I-821 in order for this application to be considered a re-registration. Since the applicant did properly file an application during the initial registration period, the director did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on August 14, 2002. That initial application was denied by the director on February 3, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application for 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. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on July 16, 2003. Since the initial application was denied on February 3, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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 term *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.

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 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 Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his TPS application on July 16, 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 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 record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated August 14, 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 qualifying residence and physical presence in the United States, a photo identification, and a copy of his birth certificate or passport. The applicant, in response, provided documentation relating to his residence and physical presence in the United States, and copies of his birth certificate and photo identification.

The director determined that the applicant had failed to submit any evidence to establish he was eligible for late registration and denied the application on December 8, 2003.

On appeal, the applicant submits additional evidence in an effort 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 neither addressed nor 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 decision to deny the TPS application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant has establish his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing the TPS application.

As stated above, the applicant was requested on August 14, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following:

1. Pay statements from Northland Pallet, Inc. dated September 21, 2001, and February 22, 2002.
2. A lease agreement dated October 3, 2001.
3. A letter from A Toast To Bread, dated August 8, 2002, indicating that the applicant worked at that establishment "doing odd jobs during January 2001."
4. A letter from a [REDACTED] dated August 24, 2003, written in the Spanish language. No English translation accompanied this letter.

The director noted that the applicant did submit additional evidence. He further noted that the lease agreement (No. 2 above) did not contain the term of the lease. He concluded that the evidence submitted was insufficient to establish the applicant's qualifying residence and physical presence in the United States during the requisite periods and denied the application on December 8, 2003.

On appeal, the applicant submits the following:

5. A letter from State Fund Mutual, dated June 4, 2002, enclosing a copy of the Health Care Provider Report form, and advising the applicant that he had reached maximum medical improvement status on March 13, 2002, from his work injury on February 14, 2002.
6. A copy of a Minnesota Identification Card issued on March 9, 2003.
7. Pay statements from [REDACTED] dated April 18, 2003; May 16, 2003; and September 19, 2003.
8. A duplicate copy of the lease agreement (No. 2 above), also without dates to reflect the term of the lease.

The employment letter from A Toast To Bread (No. 3 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 and attested to by the employer under penalty of perjury; and the employer did not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the periods(s) of layoff, if any, and the applicant's duties with the company. Additionally, as noted by the director, the lease agreement (Nos. 2 and 8 above) did not contain the term of the lease. And finally, the letter from [REDACTED] (No. 4 above) did not include an English translation as required by 8 C.F.R. §103.2(b)(3).

The record indicates that the applicant has furnished sufficient evidence to establish continuous physical presence from September 2001 to the date he filed his application on July 16, 2003. However, the applicant has furnished insufficient credible evidence to establish his qualifying residence and physical presence in the United States during the period from February 13, 2001, to September 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 TPS application on this ground will also 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.