



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **DEC 11 2006**

[EAC 04 042 51449]

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.

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 denied the application because the applicant failed to establish his continuous residence in the United States during the requisite time periods.

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 filed his initial application [EAC 02 239 50040] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 3, 2002. That application was denied on June 23, 2003, due to abandonment because the applicant failed to respond a request for additional evidence.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 12, 2003. The director denied this application on September 8, 2004, because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also denied the application because the applicant failed to establish his continuous residence in the United States during the requisite time periods.

Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on July 3, 2002. That initial application was denied by the director on June 23, 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 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. 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 November 12, 2003. Since the initial application was denied on June 23, 2003. 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 applicant is eligible for TPS 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 § 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, 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 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 24, 2004, 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). In addition, the applicant was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001. In response, the applicant submitted the following evidence: a copy of his El Salvadoran passport; copies of his El Salvadoran birth certificate in Spanish; copies of his Employment Authorization card valid from September 10, 2002 to September 9, 2003 and his Social Security card; a copy of his 2003 Form W-2, Wage and Tax Statement; a copy of his payroll check dated April 14, 2004, from [REDACTED] a letter dated April 20, 2004, from [REDACTED] who stated that she had had contact with the applicant from December 22, 2002 to January 10, 2004; an affidavit dated April 19, 2004, from his landlord, [REDACTED] who stated that he has known the applicant since April 31, 2000; and a copy of a certificate dated August 22, 2002, from [REDACTED]

The director determined that the applicant did not establish his eligibility for TPS late registration and his qualifying continuous residence in the United States; therefore, the director denied the application on September 8, 2004.

On appeal, the applicant requests an additional 30 days to submit evidence to establish his eligibility for TPS late registration and his qualifying continuous residence in the United States. However, as of the date of this notice, the applicant has not submitted any additional evidence has been entered into the record in support of his claim of eligibility for TPS. Therefore, the record will be considered complete.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed the instant application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

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. A review of the record of proceedings reflects that the applicant has not 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 application for TPS 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.

The statements from the applicant's landlord, [REDACTED] are not supported by corroborative evidence, such as receipts for rent payments. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support [REDACTED] statements. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. In addition, the copies of the applicant's 2003 Form W-2, payroll check, and the letter from [REDACTED] all post-date the beginning requisite time period for continuous residence in the United States.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirements described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence in the United States during the requisite time periods. 8 C.F.R. § 244.2 (b). Therefore, the application will also be denied for these reasons.

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.