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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

FEB 23 2006

[EAC 04 056 51504]

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.

for 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 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 on June 13, 2004, because the applicant had failed to submit requested evidence to establish that he: (1) was eligible for late registration; (2) is a citizen or national of El Salvador; (3) had continuously resided in the United States since February 13, 2001; and (4) had been continuously physically present since March 9, 2001.

On appeal, the applicant asserts that he responded to all requests issued by the director. A review of the record of proceeding indicates that the applicant did respond to the director's request for additional evidence. The response was received at the Vermont Service Center on April 23, 2004, prior to the director's decision. The applicant submits additional evidence, including copies of evidence previously furnished.

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 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 condition described in paragraph (f)(2) of this section.

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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 shows that the applicant filed his TPS application on November 28, 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.

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).

The record indicates that the applicant did file an initial application for TPS during the initial registration period on May 21, 2001 (EAC 01 200 57282). The director denied that application based on abandonment on April 23, 2003, because the applicant failed to appear at a scheduled appointment to be fingerprinted. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on November 28, 2003 (EAC 04 056 51504). In a notice of intent to deny dated March 24, 2004, the applicant was requested to submit evidence to establish that he was eligible to register under the late initial registration provisions. See 8 C.F.R. § 244.2(f)(2). The director determined that the applicant had failed to respond and denied the application on July 13, 2004.

On appeal, the applicant asserts that he did respond to the director's request. He submits additional 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 TPS application within the initial registration period.

The applicant has failed to submit 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 on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established that he is a citizen or national of El Salvador.

The applicant was requested on March 23, 2004, to provide documentation to establish that he is a citizen or national of El Salvador. The record of proceeding contains a copy of an El Salvadoran passport issued to the applicant in El Salvador on September 30, 1999.

The applicant has, therefore, overcome this ground for denial.

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

In a notice of intent to deny dated March 24, 2004, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. The director determined that the applicant had failed to respond and denied the application on July 13, 2004.

On appeal, the applicant asserts that he did respond to the director's request. He submits additional evidence, including copies of evidence previously furnished:

1. A letter of employment dated July 22, 2003, [REDACTED] verifying that the applicant is an employee of the company from August 19, 2001, to the present.
2. Copies of pay statements from [REDACTED] October 26, 2001; November 21, 2001; February 22, 2002; March 22, 2002; October 25, 2002; January 24, 2003; September 26, 2003; November 14, 2003; December 24, 2003; July 16, 2004; and July 23, 2004.
3. Copies of Forms W-2, Wage and Tax Statement, for 2001 and 2002; and copies of Forms 1040EZ, Income Tax Return, for 2001 and 2002.
4. A copy of a notice of completion of application for Inpatient Medicaid dated January 18, 2002, from [REDACTED] Brooklyn, New York, and a copy of a billing statement dated August 21, 2002, for services rendered at the Medical Center on February 6, 2002.
5. A copy of Trans-Fast Remittance, Inc. money transfer receipt dated December 24, 2002.
6. A copy of a Gigante Express International Courier money transfer receipt dated July 21, 2000.
7. Statements from [REDACTED] claiming to be friends of the applicant and indicating that they know the applicant has been living in the United States since July 22, 2000.

8. A statement from [REDACTED] indicating that he has known the applicant since September 2000, and that he knows the applicant has been living in the United States since July 22, 2000.

The statements from the applicant's friends (No. 7 and 8 above) attest to the applicant's residence in the United States based on their personal knowledge, but fail to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. Moreover, the wording of these "fill-in-the-blank" statements (No. 7 above) is identical, and the handwriting on each of these statements also is identical. As such, these documents appear to have been prepared for the affiants rather than by the affiants. [REDACTED] (No. 8 above) indicated that he has known the applicant since September 2000; however, he failed to indicate how he knows the applicant has been residing in the United States since July 2000.

The Gigante Express receipt (No. 6 above) was dated July 21, 2000, prior to the applicant's claimed entry into the United States. The applicant indicated on his TPS application that his date of entry into the United States was July 22, 2000; this date was reaffirmed by the applicant on appeal.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The document noted above is not considered credible and greatly reduces the credibility of other documents contained in the record of proceeding.

The remaining evidence only establishes the applicant's physical presence from August 2001 to the date of filing the application. No credible documentary evidence was furnished to establish continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001 to August 2001. The applicant claimed to have lived in the United States since July 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application will also be denied on this ground.

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 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.