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Washington, DC 20529

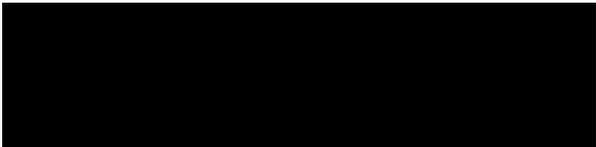


U.S. Citizenship
and Immigration
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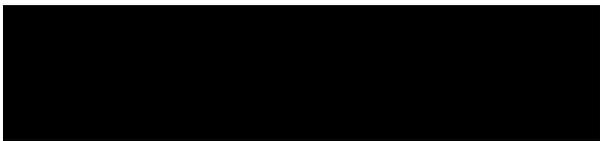
[EA 04 125 54071]

Office: VERMONT SERVICE CENTER

Date: JAN 05 2006

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 "R. Wiemann".

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 director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that he was eligible for late registration. The director also determined that the applicant failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001.

On appeal, the applicant indicates that he is renewing his TPS application.

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. That application was denied on June 4, 2003 due to abandonment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file either a motion or an appeal during the requisite timeframe.¹

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 8, 2004. The director denied this second application 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. Since the applicant did properly file an application during the initial registration period, the director erred in her 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 April 27, 2001. The director denied that application on June 4, 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 March 8, 2004. Since the initial application was denied on June 4, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

¹ The record demonstrates that the Notice of Intent to Deny dated January 29, 2003, and the Director's Decision dated June 4, 2003 were sent to the applicant's last known address.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, 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).

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

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) March 8, 2004.

The record of proceedings 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, 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 that 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).

On April 22, 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). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on July 26, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant submitted 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 Application for Temporary Protected Status within the initial registration period. 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 conclusion that the applicant had failed to establish his eligibility for 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 applicant initially submitted the following documentation:

1. A copy of the applicant's El Salvadoran passport issued to him in Washington on September 9, 2000;
2. A photocopy of the applicant's Virginia State Identification Card issued to him on September 16, 2000;
3. A copy of a request for name removal dated December 27, 2000 relating to [REDACTED] request to have his name removed from the lease [REDACTED];
4. A copy of a Verizon bill dated January 16, 2001, and bearing the name [REDACTED] the customer residing [REDACTED] Maryland;
5. A copy of a pay statement from United Foundations, Inc. dated October 15, 2000 and bearing the name [REDACTED] as employee;
6. A copy of an envelope addressed to [REDACTED] Maryland, with a post date of February 23, 2001;
7. A copy of page one of the applicant's IRS Form 1040A, U.S. Individual Income Tax Return for 2001;
8. Copies of pay stubs from [REDACTED] bearing the [REDACTED] and dated March, April, and June of 2001; and,
9. A copy of a Chevy Chase Bank statement bearing the applicant's name and dated April 19, 2001.

As stated above, the applicant was requested on April 22, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

10. A copy of a pay stub from Redee Concrete Corp. bearing the [REDACTED] and dated March 16, 2001; and,
11. A copy of a Verizon bill dated March 16, 2001 and bearing the name [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 26, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

12. A letter [REDACTED] general manager of Alho Torres Masonry, Inc. in which he states that the applicant was hired by the company on September 16, 1999, and that his last day of employment with the company was on August 9, 2000;
13. A letter from Ramirez Insurance Agency, Inc. dated May 12, 2004 in which Mr. Ramirez states that the applicant has been insured with his company since January 27, 2001, and that the applicant's automobile insurance policy is currently active; and,
14. A letter from the management of Sawyer Realty Holdings LLC in which it is stated that the applicant has been living [REDACTED] since February of 2001.

The applicant resubmitted a copy of the Verizon bill dated March 16, 2001, and a copy of the pay stub from Redee Concrete Corp. dated March 16, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001. The applicant's El Salvadoran passport and Virginia State Identification Card (Nos. 1 and 2 above) are dated prior to February 13, 2001 and therefore cannot be used to establish continuous residence. The applicant's name does not appear on the request for a name removal, Verizon bills dated January 16, 2001 and March 16, 2001, or the pay statement dated October 15, 2000 (Nos. 3, 4, 5, and 11) and therefore, will not be considered as evidence to establish the applicant's continuous residence. The applicant submitted a copy of page 1 of his IRS Form 1040A for 2001 (No. 7 above); however, this one page document does not specify what months or days the applicant was actually employed during that year. The copies of the pay stubs from Redee Concrete Corp. and the Chevy Chase bank statement (Nos. 8, 9, and 10 above) are all dated subsequent to February 13, 2001, and therefore cannot be used to establish the applicant's continuous residence during the requisite time period. In the letter from Alho Torres Masonry, Inc. (No. 12 above) Scott Wyler indicates that the company employed the applicant from September 16, 1999 to August 9, 2000, which is prior to the requisite time period.

Neither the copy of the envelope dated February 23, 2001, the letter from Ramirez Insurance Agency, nor the letter from Sawyer Realty Holdings LLC (Nos. 6, 13, and 14 above) are supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since January of 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these documents; however, no such evidence has been provided. 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 applicant has failed to establish that he has met the continuous residence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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.

The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.