U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 26 2006
[EAC 04 004 52396]

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:

[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, 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 found that the applicant had failed to establish continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 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 § 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. 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 granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his TPS application with Citizenship and Immigration Services (CIS) on October 3, 2003.

The burden of proof is upon the applicant to establish that he 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his current TPS 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On October 24, 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 continuous residence and continuous physical presence in the United States. Counsel

for the applicant, in response, stated that a Form I-485, Application to Register Permanent Residence or Adjust Status, was filed for the applicant with the Newark District Office. Counsel further stated:

> Although it was filed before his 21st birthday, when he became 21 years old the application was not processed, even though the check was cashed. Under the child protection act, Mr. [redacted] would still be eligible to adjust his status.

Counsel submitted the following:

1. a photocopy of the front and back of a cashed personal check dated March 19, 2001, from the applicant's mother, [redacted] payable to the Immigration and Naturalization Service (now CIS) in the amount of $1455.00 for '[redacted] bearing the handwritten notation, "CP15018, 4/9/01, $1455.76" on the reverse side of the check;

2. a photocopy of a notice from the Newark District Office dated October 12, 2001, rejecting the applicant's Form I-485 because the Department of State visa bulletin indicated that no visa was available for the applicant's preference classification, and the application was, therefore, not properly filed;

3. a photocopy of Policy Memorandum HQADN 70/7.1.1 [redacted] then Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, indicating that under the Child Status Protection Act, CIS would use the filing date of the Form I-130, Petition for Alien Relative, to determine the age of a beneficiary seeking adjustment as the child of a United States citizen, so that an alien who was 20 when a Form I-130 was filed on his or her behalf remains eligible for adjustment of status as the child of a United States citizen even if the adjustment does not occur until after the child turns 21, provided the child remains unmarried;

4. a notice instructing the applicant to appear at the Newark District Office to be fingerprinted on June 6, 2001;

5. a Form I-797 notice acknowledging receipt of a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, filed on the applicant's behalf under CIS receipt number EAC 01 154 53994 by his step-father, [redacted] a naturalized United States citizen, on March 28, 2001; and,

6. a photocopy of a Form I-797 notice informing the applicant that a Form I-130 filed on his behalf under CIS receipt number EAC 01 154 53994 had been approved, and that the applicant had been classified as the unmarried child (age 21 or older) of a United States citizen under section 201(a)(1) of the Act.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 29, 2004.

On appeal, counsel for the applicant does not make a statement or submit any evidence regarding the applicant's eligibility for late initial registration.

The record reveals that the applicant is the beneficiary of two approved Form I-130 petitions. One Form I-130 was filed with the Newark, New Jersey, District Office on March 28, 2001, under CIS receipt number EAC 02 190 53154, and was approved by the District Director, Newark, on June 3, 2002. The second Form I-130 was filed with the Vermont Service Center on April 5, 2001, under CIS receipt number EAC 01 154 53994, and was approved by the service center director on May 17, 2002. Both petitions were filed seeking to classify the applicant as the child of a United States citizen. Both immigrant visa petitions were filed when the applicant was 20 years old, and both petitions were approved after the applicant had turned 21 years of age.

Counsel for the applicant submitted a Form I-485 with filing fees to the Newark District Office on March 28, 2001, the same filing date as the Form I-130 approved under CIS receipt number EAC 02 190 53154. On October 12, 2001, the Form I-485 was rejected and returned to the applicant because the Department of State visa bulletin indicated that no visa was available for the applicant's preference classification and the adjustment application, therefore, was not properly filed. The notice indicated that the filing fees would be refunded in full.

The record contains a Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence indicating that action was terminated on the applicant's adjustment processing on May 8, 2002, and that refunding of the filing fees was being processed.

The question to be determined is whether the applicant had a pending adjustment application during the initial registration period for Salvadorans, and whether he filed his TPS application within 60 days of the termination of his adjustment application. In this case, the record confirms that counsel for the applicant filed a Form I-485 adjustment application concurrently with a Form I-130 immigrant visa petition filed on the applicant's behalf by his step-father, a naturalized United States citizen, on March 28, 2001. No action was taken on the adjustment application while the Form I-130 was pending. On October 12, 2001, the applicant's adjustment application was rejected as improperly filed because no visa number was available for the applicant's immigrant visa preference classification.

The applicant cannot qualify for late initial registration on the basis of a pending Form I-485 adjustment application because the applicant's adjustment application was rejected on October 12, 2001, as improperly filed. As stated by the director, even if the 60-day period were to be calculated based on the date the Form I-485 was returned to the applicant, October 12, 2001, the applicant would have been required to file the Form I-821 by December 12, 2001. The applicant did not file his TPS application until October 3, 2003.

As to the policy memorandum regarding the Child Status Protection Act (No. 3 above), it appears that the applicant, under CSPA, qualifies for classification as the child (unmarried son or daughter under the age of 21) of a United States citizen for the processing of his application for adjustment of status because he was 20 years old when both immigrant visa petitions were filed. However, the memo does not suggest that this classification would render the applicant a "child" under any other programs that are unrelated to adjustment of status. TPS is completely separate from adjustment of status; the applicant applied for TPS when he was 23 years old, so he is not considered a 'child" for the purposes of TPS. It is noted that the applicant now has a pending Form I-485, Application to Register Permanent Residence or Adjust Status. Since this application was filed on June 23, 2005, it does not render the applicant eligible for late initial registration.

The applicant has not submitted any evidence to establish that he has met any of the other 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 continuous physical presence in the United States since March 9, 2001. Specifically, the director determined that the applicant had not submitted evidence to establish his continuous physical presence in the United States during the period from March 25, 2003 to October 6, 2003.

The applicant claimed on his Form I-821 that he first entered the United States in June 1998. He submitted the following evidence relating to the six-month period from March 25, 2003 to October 6, 2003:

1. a letter dated August 19, 2003, from [redacted] in Millington, New Jersey, stating that the applicant was employed by his firm from March 1998 through August 19, 2003;

2. a photocopy of a letter dated May 8, 2003 from counsel to the Newark District Office, stating that the filing fee relating to the Form I-485 submitted on the applicant's behalf on March 28, 2001, had never been refunded, and further stating that the beneficiary is eligible to apply for adjustment of status as the child of a United States under CSPA;

3. a photocopy of the applicant's New Jersey driver's license issued on August 22, 2003;

As stated above, the applicant was requested on October 24, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. Counsel, in response, submitted evidence of the applicant's residence and physical presence in the United States, but none of the evidence submitted related to the period from March 25, 2003 to October 6, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous physical presence in the United States throughout the requisite period and denied the application.

On appeal, counsel for the applicant states that the majority of the applicant's evidence of continuous physical presence in the United States throughout the requisite period relates to his immigration filings for employment authorization, the immediate relative immigrant visa petition, and the adjustment of status application. Counsel contends that the evidence of record is more than sufficient to establish the applicant's continuous physical presence in the United States throughout the requisite periods.

The various applications and petitions contained in the record of proceeding reflect the applicant's continuous residence and physical presence in the United States in 2001 and 2002, but they do not reflect the applicant's continuous physical presence in the United States throughout the period in question. The applicant's employment authorization record indicates that he was issued an Employment Authorization Card valid from August 6, 2002 through August 5, 2002, based on a pending adjustment application. The applicant filed another Form I-765, Application for Employment Authorization, with the Newark District Office on March 24, 2003, but it was denied. There is a gap in the applicant's employment authorization history until September 20, 2005, at which

time a new Employment Authorization Card was issued by the Missouri Service Center valid from September 20, 2005 through September 19, 2006 based on a pending adjustment application.

The employment letter from [redacted] 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 format, and [redacted] does not provide any information regarding the applicant's duties for his company or periods of layoff if any. Further, there is a discrepancy between the applicant's claimed date of entry into the United States and the employment dates provided by [redacted] states that the applicant worked for his company from March 1998 through August 19, 2003, but the applicant indicated on his TPS application that he didn't enter the United States until June 1998. The applicant has not provided any explanation for this discrepancy. 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. Further, it is incumbent on 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. (Comm. 1988).

The applicant's New Jersey driver's license, which was issued on August 22, 2003, is not sufficient to establish his continuous physical presence in the United States during the period in question.

The applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States throughout the requisite period. He has, therefore, failed to establish that he has met the criterion described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

It is noted that the record reveals the following offenses:

1. On December 7, 2004, the applicant pled guilty in the North Plainfield Municipal Court, North Plainfield, New Jersey, to the charge of operating a motor vehicle under the influence of alcohol in violation of 39:4-50, a misdemeanor. His driver's license was revoked for a period of seven months and he was ordered to pay fines and costs in the amount of $663.00. (Summons/Complaint No. B151727).

2. On April 13, 2006, the applicant was convicted in the Court of Common Pleas of Cumberland County, Pennsylvania, on one count of driving under the influence of alcohol, a misdemeanor of the first degree. The applicant was ordered to undergo imprisonment in the Cumberland County Prison for a term of not less than 48 hours nor more than 6 months with credit for 24 hours served; to pay the costs of prosecution; and, to pay a fine of $300. (CP-21-2233-20000; OTN: L073734-3).

The applicant is also ineligible for TPS due to his record of two or more misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.