



U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 16 2007

[EAC 04 080 53734]

IN RE:

Applicant:

[REDACTED]

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 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 establish he: 1) had continuously resided in the United States since February 13, 2001; and 2) was eligible for late registration.

On appeal, the applicant states that he filed for TPS during the initial registration and that his application was erroneously denied.

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 July 27, 2001. That application was denied as abandoned on May 9, 2003, because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The director also determined that the applicant failed to submit requested court documentation relating to his criminal record. It is noted that the request for evidence and notice of decision were sent to an old address. Consequently, the application should not have been denied as abandoned. However, the applicant did fail to establish continuous residence and continuous physical presence during the requisite period. The applicant did not file an appeal of the director's decision during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 9, 2004. The director denied this 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. In addition, the director determined that the applicant failed to establish continuous residence since February 13, 2001. 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 27, 2001. That initial application was denied by the director on May 9, 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 January 9, 2004. Since the initial application was denied on May 9, 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 applicant who is a national of a foreign state as 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 conditions described in paragraph (f)(2) of this section.

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.

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

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on January 9, 2004.

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 this 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). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On April 14, 2004, the applicant was provided the opportunity 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 continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In addition, the applicant was requested to submit evidence revealing the final court disposition of his arrest. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period and the court documents. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he complied with the TPS requirements. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application 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 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.

As stated above, the applicant was requested on April 14, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of a Criminal History Record Information Request dated May 6, 2004; and copies of final court dispositions for criminal charges. The record indicates the applicant was arrested by the Arlington, Texas Police Department on September 9, 1998 for "Appear Drunk in Public in Arlington County", and on September 25, 2001 for "Assault and Battery."
2. Copies of a Verizon bill with a due date of November 30, 2003, a receipt dated January 6, 2003, and a copy of a check dated February 22, 2002.
3. Copies of a State of Virginia Driver's License issued on September 7, 1999, a Social Security card, and copies of Employment Authorization cards.
4. Statements from [REDACTED] D.D.S., [REDACTED] and [REDACTED]

The director concluded that the applicant met his continuous physical presence during the requisite period, but had failed to establish his qualifying continuous residence in the United States during the requisite period and denied the application. On appeal, the applicant submits:

5. Statements from [REDACTED] dated October 12, 2004, [REDACTED] dated October 11, 2004, and [REDACTED] D.D.S dated October 1, 2004.

[REDACTED] stated that the applicant came to his office on September 28, 2001. [REDACTED], Asst. Community Manager, Montgomery White Oak Apts., stated that the applicant resided in her apartments at [REDACTED], Silver Spring, Maryland, from September 1, 2001 to July 31, 2003. [REDACTED] stated that she treated the applicant on July 31, 2001. [REDACTED], Property Manager of Gables Residential, stated that the applicant has resided in her apartment building at [REDACTED], Hyattsville, Maryland since July 1, 2003. [REDACTED], President of Golden Floor, Inc., stated that his company has employed the applicant since September 2002. [REDACTED], Sales and Service Associate, Chevy Chase Bank, stated that the applicant has had a checking account with his bank since November 19, 2002. The individuals in these statements can only attest to the applicant's presence since July 31, 2001.

[REDACTED] states that the applicant has lived at his house at [REDACTED] Arlington, Virginia since 2000. [REDACTED] states that he has known the applicant since October 2000. [REDACTED] states that she has known the applicant since the end of 1999 and treated him on July 31, 2001. [REDACTED] statement directly contradicts the statements previously submitted by [REDACTED] and [REDACTED]. Furthermore, the applicant lists an address of [REDACTED] Hyattsville, Maryland on an application submitted on November 17, 2003. These discrepancies have not been satisfactorily explained. 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 in fact lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Furthermore, [REDACTED] and [REDACTED] statements, and the statements discussed above are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. These statements are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The October 13, 1998 court disposition and the driver's license indicate the applicant was present in the United States prior to February 13, 2001. The applicant has failed to provide any evidence indicating his presence in the United States from February 13, 2001 to July 31, 2001. The applicant has not submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria 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 is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence since March 9, 2001. Therefore, the application must be denied for this reason as well.

It is also noted that the record of proceeding reflects that on January 23, 1996, an immigration judge ordered the applicant removed from the United States to El Salvador. A Warrant of Removal/Deportation, Form I-205, was issued on March 4, 1996.

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.