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U.S. Citizenship
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Services

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FILE:



[EAC 06 154 51082]

Office: VERMONT SERVICE CENTER

Date:

NOV 16 2007

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:

JUSTINE MAROUS
MAROUS & MAROUS, P.C.
1674 BROADWAY, SUITE #502
NEW YORK, NY 10019

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite time periods.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 March 9, 2009, 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 record of proceedings reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number EAC 01 160 54716. The Director, Vermont Service Center, denied that application on June 6, 2003, due to abandonment, because the applicant failed to respond to the Notice of Intent to Deny. The applicant did not file a motion to reopen the director's denial. The applicant filed another TPS application subsequent to the initial registration period under CIS receipt number EAC 04 120 54952. The Director, Vermont Service Center, denied that application on September 8, 2004, because the applicant failed to establish his eligibility for late registration, and because he failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant did not file an appeal of the director's denial.

The applicant filed a TPS application under CIS number WAC 05 218 70231 on May 6, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on September 2, 2005, because the applicant's initial TPS application had been denied, and the applicant was not eligible to apply for re-registration for TPS. The applicant did not file an appeal of the director's denial.

The applicant filed the current TPS application on April 24, 2006.

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), on April 24, 2006.

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 June 29, 2006, 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 residence and 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 April 20, 2007.

On appeal, counsel states that the applicant is eligible for late registration because he had a pending application for relief from removal, TPS application CIS EAC 01 160 54716, during the initial registration period, and because he was paroled into the United States in 1991. Counsel further states that the applicant was informed during a hearing before the Immigration Judge in March of 2006, that his TPS application under CIS EAC 01 160 54716 had been denied; and that he submitted the current TPS application within two months of that notice. Counsel further states that the applicant received his Employment Authorization Cards, but never received any other correspondence from the Service Centers. In support of the appeal, through counsel, the applicant submits a copy of his TPS application submitted in 2001, and additional evidence dated between May of 2001 and 2004.

The applicant has not submitted sufficient evidence to establish that he qualified for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g). The assertions of counsel are not persuasive that the applicant would qualify for late initial registration because a "pending" Form I-821 filed during the initial registration period would constitute an application pending for "relief from removal" during the initial registration period. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. Taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could file a new application within 60 days after the denial for abandonment, abandon the new application, and perpetuate the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary

Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). It is noted that all correspondence was mailed to the applicant at his last known address. It is also noted that the address used to mail the applicant's Employment Authorization Cards –which he confirms he received– was the same address used to mail the Notices of Intent to Deny, and the Denial Notices. Therefore, the application will be denied based on the applicant's failure to establish his eligibility for late registration. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second issue in this proceeding is whether the applicant submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The director, after review of all the evidence submitted, denied the current TPS application on April 20, 2007, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. In his decision, the director determined that the applicant had failed to submit evidence of his residence or physical presence prior to September 10, 2001, and that the affidavits he submitted were not, in and of itself, persuasive evidence of his presence in the country.

On appeal, counsel states that the applicant has submitted sufficient evidence to establish his continuous residence and continuous physical presence in the United States, and submits additional evidence in an effort to substantiate that claim.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant submitted as evidence copies of his Employment Authorization Cards; Income Tax Forms 1040, 1099, and W-2; correspondence from State Farm Insurance Company; American Home Assurance, Inc. documents; Arizona Premium Finance Co., Inc. correspondence; pay statements; a letter from the Social Security Administration; New York State registration documents; and a copy of his New York Identification Card. All evidence was dated from May 5, 2001. There has been no credible evidence submitted to demonstrate the applicant's whereabouts from February 13, 2001 to May 5, 2001.

The applicant submitted two affidavits of employment from [REDACTED], a representative of the Total Landscaping Care company. In the first affidavit dated October 24, 2003, [REDACTED] stated that the company employed the applicant for the 2003 season. The phrase "for the" has been crossed out and the word "since" has been inked in as a replacement statement. In the second affidavit dated July 24, 2006, [REDACTED] stated that the company employed the applicant since February of 2001. The affidavit dated October 24, 2003, above has been altered, as the original phrase "for the" has been crossed out and the word "since" has been inserted in its place.

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 applicant has failed to submit any objective evidence to explain or justify the inconsistencies. There has been no explanation given for the discrepancies in the employment dates quoted. Neither has there been a justification given for the alteration of the statements made in the October 24, 2003, affidavit. In addition, there has been no corroborative evidence submitted by the applicant to substantiate the assertions made. The applicant claims to have been present in the United States since April 20, 1991. It is reasonable to expect that he would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Without corroborative evidence, the affidavits do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

The record reflects that the applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), and has failed to overcome this portion of the director's findings. 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.