



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

OCT 19 2007

[EAC 06 340 80181]

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:

[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 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 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 periods.

On appeal, counsel claims the applicant's 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 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 September 5, 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 December 28, 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 February 26, 2007.

On appeal, counsel states that the applicant is eligible for late registration in that his mother is a TPS registrant. The applicant submitted copies of his mother's notice of TPS approval and employment authorization card, and a copy of his birth certificate as evidence.

The record of proceeding shows that the applicant turned 21 on June 10, 2006; and therefore, he ceased being considered a "child" of an alien currently eligible to be a TPS registrant. The applicant was allotted 60 days from the termination of his condition as the child of a TPS registrant in which he could file his TPS application. However, he failed to do so until September 15, 2006. 8 C.F.R. § 244.2(g). Therefore, the director's decision with regard to this issue 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, and his physical presence in the United States since March 9, 2001.

The applicant submitted the following documentation along with his TPS application:

1. A letter from the general manager of [REDACTED] in which he stated that the applicant was employed, full-time, by the restaurant from January of 2001 until October of 2002;
2. A copy of an invoice from UCEDA Institute bearing the applicant's name and dated March 31, 2004;
3. A copy of a receipt from [REDACTED] Insurance bearing the applicant's name as customer and dated February 2, 2004;
4. A photocopy of a [REDACTED] member card bearing the applicant's name as patient and dated January of 2005;
5. A copy of a bank statement from [REDACTED] bearing the applicant's name as account holder and dated November 21, 2005;
6. A copy of a pay statement from [REDACTED] bearing the applicant's name as employee and dated January 29, 2006;
7. A copy of a money order receipt from [REDACTED] bearing the applicant's name as sender and dated February 20, 2006; and,
8. A copy of an envelope addressed by the applicant and postmarked 2003.

As stated above, the applicant was requested on December 28, 2006 to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

9. An affidavit from [REDACTED] in which he stated that he has known the applicant to be present in the United States since January of 2001;
10. An affidavit from [REDACTED] in which he stated that he has employed the applicant as a cleaner from January of 2001 to July of 2001;

11. Copies of pay statements bearing the applicant's name as employee and dated November of 2006 and January of 2007;
12. A copy of a pay statement from [REDACTED] bearing the applicant's name as employee and dated December 18, 2005;
13. Copies of bank statements from [REDACTED] bearing the applicant's name as account holder and dated September and October of 2006;
14. A copy of a money order receipt from [REDACTED] bearing the applicant's name as sender and dated August 3, 2005;
15. A copy of a lease agreement bearing the applicant's name as tenant and dated December of 2003; and,
16. A receipt from [REDACTED] bearing the applicant's name and dated November of 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 26, 2007.

On appeal, counsel states that the applicant entered the United States on or about January 18, 2001, and has not left the country. Counsel also states that the applicant has submitted a preponderance of evidence sufficient to establish his residence and physical presence in the United States prior to January of 2005.

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 evidence submitted is dated subsequent to February 13, 2001 and March 9, 2001; and therefore, does not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant submitted affidavits in an effort to establish his residence and physical presence in the United States during the requisite time periods. Although the affiants state in the affidavits that they have known the applicant to be present in the United States since January of 2001, there has been no corroborative evidence to substantiate their assertions. The applicant claims to have been present in the United States since January of 2001. 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 from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

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). 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.