

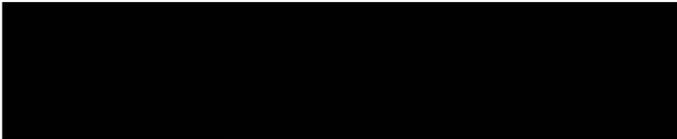
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 06 361 72025]

Office: Vermont Service Center

Date: **MAY 09 2008**

INRE: 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.


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed his initial TPS application on August 26, 2002, under Citizenship and Immigration Services (CIS) receipt number LIN 02 271 51702. The Director, Nebraska Service Center, denied that application on March 7, 2003, after he determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the **qualifying** periods. A subsequent appeal was dismissed on December 17, 2003, after the Director, now Chief, of the AAO determined that the applicant had failed to establish his eligibility for TPS. On September 10, 2003, the applicant filed a second TPS application under CIS receipt number LIN 03 267 50028, and indicated he was filing a new application for TPS. The director denied that application on June 17, 2004, after he determined that the applicant had failed to establish eligibility for late registration for TPS. The director also found that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The record does not reflect that the applicant appealed the director's decision.

The applicant filed his current TPS application on August 31, 2006, under CIS receipt number EAC 06 361 72025. The Director, Vermont Service Center, denied this application after he determined that the applicant had failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that he has been continuously present in the United States since December 15, 2000.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid 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 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on August 31, 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.

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 he was eligible for late registration and denied the application on April 4, 2007.

On appeal, the applicant provides an explanation for the big difference in the wage information shown on his two W-2 Wage and Tax Statements. He states that he started working part time at 5280 Catering on January 13, 2001 and eventually began working for them full time in 2002.

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, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits evidence of his continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant submitted evidence in the form of a letter from [REDACTED] indicating that he was employed by 5280 Catering from February 2001 until June 2004. The applicant supported his claim by submitted IRS Form(s) W-2 Wage and Tax Statement(s) showing his annual wages for the year 2001 as \$4,754 and as \$14,840.25 for the year 2002. The applicant explained that there was a big difference between the yearly wages for the years 2001 and 2002 because he started to work at 5280 Catering on January 13, 2001 and only worked on a part-time basis. He stated that he was paid at the rate of \$5.15 per hour and that he did not work more than eight hours in any given week in 2001. The applicant further explained that he began training to be a cook toward the end of 2001,

and he eventually started working on a full-time basis in 2002, earning \$8.00 per hour. The applicant also submitted pay stubs from 5280 CNI, Inc. (5280 Catering) dated February 21, 2001, February 14, 2001, March 14, 2001, March 7, 2001, and April 4, 2001, and an August 20, 2002 employment letter from [REDACTED] Treasurer of 5280 CNI, Inc., attesting that the applicant was hired by the company on January 6, 2001 and remained employed there through the date [REDACTED] signed the letter.

In addition, the record also indicates that on February 28, 2002 the applicant and [REDACTED] entered an Apartment Lease Contract for rental of the premises at [REDACTED] Denver, Colorado 80218, with the Lease Contract valid from March 1, 2002 to February 28, 2003. Mr. [REDACTED] stated in an affidavit previously provided by the applicant that the applicant had rented a room from him in that apartment unit and that he had lived with him during the months of January, February, and March of 2001. Furthermore, the applicant submitted an undated letter from [REDACTED], who identified herself as the "Prop. Manager" stating that the applicant moved into [REDACTED] on February 28, 2002, and moved out on March 5, 2004. In addition, the record also contains utility bills mailed to the applicant at that address on June 5, 2002, November 1, 2002, and November 3, 2003.

After reviewing the entire record, it must be concluded that the applicant has established that he has met the continuous residence and continuous 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 be withdrawn. However, the applicant has not established eligibility for late registration.

It is noted that the record contains Form I-213, Record of Deportable/Inadmissible Alien, indicating the applicant entered the United States on December 15, 2000 at or near Nogales, Arizona, without being admitted or paroled.

The application will be denied based on the applicant's failure to establish his eligibility for late registration. 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.

ORDER: The appeal is dismissed.