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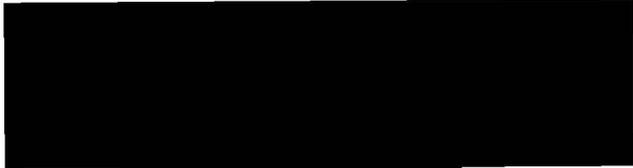
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
[EAC 09 099 94185]

Office: VERMONT SERVICE CENTER

Date: **JAN 07 2010**

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for TPS and his application for late initial TPS should be granted. The applicant also submits additional evidence.

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 April 20, 2001. That application was denied on December 4, 2001, for failure to respond to a request for evidence to establish his eligibility for TPS. The applicant subsequently submitted a re-registration application on February 14, 2005. That application was denied on September 19, 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 for either decision.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 22, 2008. 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. The director also determined that the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant's initial Form I-821 was properly filed on April 20, 2001. That initial application was denied by the director on December 4, 2001. 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 December 22, 2008. Since the initial application was denied on December 4, 2001, 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 10, 2010, 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 December 22, 2008.

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 United States Citizenship and Immigration Services (USCIS). 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 his 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 27, 2009, 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 nationality and identity, 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. The applicant was also requested to provide an answer to question 2p(iv) on page 4 of his application and to furnish information regarding his military service. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The applicant also submitted proof of his

nationality and identity and information regarding his military service. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel states that the applicant's initial TPS application provides relief from removal and preserves the applicant's ability to apply for late initial TPS. However, counsel's contention that a TPS application is a change of status application is incorrect. Change of status, by regulation, is limited to a change of one nonimmigrant classification to another. TPS does not render nonimmigrant status to the applicant. Consequently, it does not qualify as a change of status application and does not render the applicant eligible for subsequent late registration. The provisions for late registration were detailed in 8 C.F.R. § 244.2(f)(2). Moreover, taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. However, 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 in order 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). Therefore, the director's conclusion that the applicant had met this requirement is withdrawn and 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 and third issues in this proceeding are 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.

In support of the current TPS application, the applicant submitted:

1. Copies of his passport, issued in El Salvador on April 14, 2000 and Dallas, Texas on April 14, 2005 respectively.
2. Copies of pay stubs dated from March 28, 2001 to August 27, 2008.
3. Copies of bills from Dish Network dated May 4, 2004; September 4, 2004; March 2005; October 2005; February 4, 2006; November 4, 2006; January 2007; and, September 4, 2007; bills from [REDACTED] dated April 17, 2006 and October 7, 2006; money transfer receipts dated June 3, 2001; August 25, 2001; December 16, 2001; February 7, 2002; May 31, 2002; February 2, 2003; and July 17, 2004.

4. Copies of 2001, 2002, and 2003 Form W-2, Wage and Tax Statements and tax returns; earnings statements dated December 1, 2000, December 8, 2000; December 30, 2000; and January 6, 2001.
5. Copies of statements from [REDACTED] and [REDACTED] hand-written rent receipts dated January 3, 2001 and February 1, 2001.

As stated above, the applicant was requested on April 27, 2009 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. Copies of a Missouri Driver's License with an expiration date of November 10, 2008; 2002 through 2008 tax documents.
2. Copies of an employment statement from [REDACTED] for All Seasons Party and Rental and a statement from [REDACTED]

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, counsel states that the director failed to view the evidence as a whole.

The passports and birth certificate establish the applicant's identity and nationality. [REDACTED] states that the applicant lived on her property since January 3, 2001. However, [REDACTED] fails to identify the exact location of the applicant's residence. In addition, the hand-written rent receipts dated January 3, 2001 and February 1, 2001 are signed by [REDACTED]. Therefore, this evidence lacks credibility. [REDACTED] states that the applicant began working for the company on November 10, 2000. However, this statement has 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 affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that [REDACTED] did not indicate the applicant's duties of employment. [REDACTED] states that the applicant was employed by her company since March 6, 2002. This statement also fails to provide the applicant's address and therefore also lacks credibility. Furthermore, [REDACTED] can only attest to the applicant's presence in the United States since March 6, 2002, which is subsequent to the dates to establish continuous residence and continuous physical presence in the United States.

The remaining evidence establishes the applicant's presence in the United States prior to the qualifying dates to establish continuous residence and continuous physical presence and from March 6, 2002 to the filing date of the TPS application.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

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.