

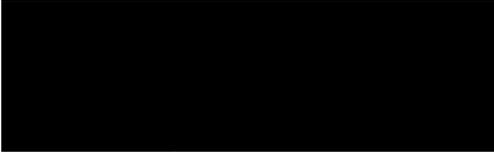
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED]
[LIN 03 241 52053]

Office: Nebraska Service Center

Date: APR 18 2005

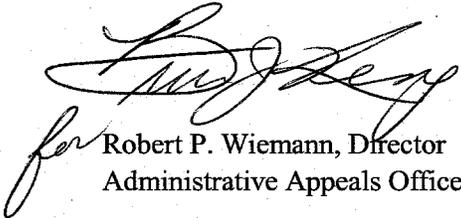
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 denied the application because the applicant failed to establish he had entered the United States prior to February 13, 2001, maintained continuous residence in the United States since February 13, 2001, and maintained continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

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. That application was denied on November 19, 2001, for abandonment because the applicant did not appear for his scheduled fingerprint appointment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on August 7, 2003. The director denied this second 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 denied the application because the applicant failed to establish he had entered the United States prior to February 13, 2001, maintained continuous residence in the United States since February 13, 2001, and maintained continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

The applicant's initial Form I-821 was properly filed on June 1, 2001. That initial application was denied by the director on November 19, 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 August 7, 2003. Since the initial application was denied on November 13, 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 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.

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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On September 10, 2003, the applicant was notified of the director's intent to deny his application, and he 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 continuous residence in the United States since February 13, 2001, his date of entry into the United States as of February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant was also requested to submit photo identification and a copy of his birth certificate or passport. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant also submitted copies of his Utah State identification card, copies of his Employment Authorization card, and a copy of his birth certificate in Spanish; however, he did not submit any documentation establishing his eligibility for late registration. The director, therefore, determined that the applicant had failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish his entry into the United States prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

The first issue in this proceeding is whether the applicant has established his entry into the United States prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

On appeal, the applicant submits the following evidence in support of his eligibility for TPS: a copy of an earnings statement from Conestoga Corporation dated December 20, 2000; copies of envelopes addressed to the applicant in the United States bearing postmark dates of September 19, 2000, November 21, 2000 and December 7, 2000; and a copy of an Internal Revenue Service (IRS), Form W-7 (SP), bearing a date stamp of December 1, 2000. It is noted that the applicant has submitted copies of the denial notice dated November 19, 2001, relating to his abandoned initial TPS application; and a copy of the fingerprint notice sent to the applicant from the Service on July 5, 2001, however, a review of CIS' systems indicates that the applicant did not appear for his fingerprint appointment until September 9, 2003, in relation to his second TPS application.

A review of the record of proceedings also reflects that the applicant previously submitted a copy of an earnings statement from Conestoga Corporation dated January 5, 2001 and copies of his earnings statements from Certified Building Maintenance, Inc., dated February 20, 2001 and March 20, 2001. As such, the applicant has established his entry prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application for TPS. Therefore, the applicant has overcome this portion of the director's decision. However, as explained previously, the applicant must also establish his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2).

The second issue in this proceeding is whether the applicant is eligible for late registration. On appeal, the applicant submits additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States; however, he did not submit any evidence to establish his eligibility for late registration. A review of the record of proceedings reflects that 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.

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.