

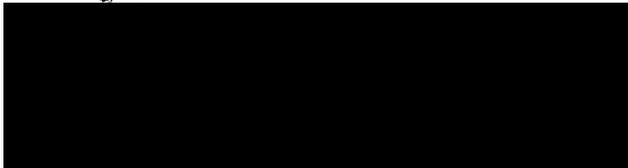
identity
prevent clearly unwarranted
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U.S. Citizenship
and Immigration
Services

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MA



FILE: [REDACTED]
[EAC 03 243 52368]

Office: VERMONT SERVICE CENTER

Date: AUG 01 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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 continuous residence in the United States during the requisite time period.

On appeal, the applicant submits a letter.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, with the VSC (EAC 01 206 55749 relates) on June 1, 2001, during the initial registration period. On August 23, 2001, the director requested the applicant to appear for fingerprinting, required in connection with his application. The notice to appear was forwarded the applicant at the address indicated on his Form I-821. The applicant failed to appear as requested.

The director denied the applicant's first Form I-821 on February 28, 2002, due to abandonment because the applicant failed to respond to the request to appear for fingerprinting. The denial notice was also forwarded to the applicant at the address indicated on his Form I-821. 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 director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the instant Form I-821 with the VSC on August 18, 2003. While the director found the applicant ineligible for TPS, in part, because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-821 application was denied on February 28, 2002, the instant application cannot be considered as an application for annual re-registration. The instant Form I-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 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 § 244.3;
- (e) Is not ineligible under § 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.

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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. As indicated above, the applicant filed the instant Form I-821 on August 18, 2003, more than eleven months after the initial registration period had ended.

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 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).

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On his Form I-821, the applicant indicated that he had entered the United States on February 9, 2001. On September 30, 2003, 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 to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In support of his initial application and in response to the request for additional evidence, the record reflects that the applicant submitted the following documentation:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of the identification page from his El Salvadoran passport;
3. A photocopy of an affidavit, dated July 25, 2003, from [REDACTED] stating that the applicant had been physically present in the United States since February 13, 2001;
4. A photocopy of a Sears Master Protection Agreement Request, dated June 16, 2003;
5. A photocopy of a 2002 Internal Revenue Service (IRS) Form W-2;
6. A photocopy of his 2002 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents;
7. A photocopy of an American Airlines receipt, dated February 12, 2000, for travel from Los Angeles, California, to Boston, Massachusetts;
8. Photocopies of Travelers Express MoneyGrams, dated July 21, 2003;
9. A photocopy of an earnings statement, dated May 2003;
10. Photocopies of rent receipts;
11. A photocopy of a Boston Medical Center receipt, dated March 29, 2001;
12. Photocopies of Urgente Express International Courier receipts, dated July and November 2002, and June and July 2003; and,
13. Photocopies of Citizen's Bank account statements, dated August through September 2003;

The director determined that the documentation submitted was not sufficient to establish the applicant's qualifying continuous residence in the United States during the requisite time period. The director also determined that the applicant had failed to submit any evidence to establish his eligibility for late registration. The director denied the application on February 6, 2004.

On appeal, the applicant submits a letter, dated February 16, 2004, asserting that he arrived in the United States on February 9, 2001; traveled to Los Angeles, California, by bus; then flew to Boston, Massachusetts.

Based on the documentation submitted, it is concluded that the applicant has established his qualifying continuous residence in the United States from February 13, 2001, to the date of filing the instant application on August 18, 2003. Therefore, the decision of the director to deny the application on the ground that the applicant had failed to establish his qualifying continuous residence will be withdrawn.

However, the record confirms that the applicant filed the instant application after the initial registration period had expired. Although the applicant has submitted evidence to establish his qualifying continuous residence and continuous physical presence in the United States, this evidence does not mitigate the applicant's failure to file his Form I-821 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 decision to deny the application for temporary protected status on this ground will be affirmed.

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.