



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 03 263 51270]

Office: VERMONT SERVICE CENTER

Date: **AUG 02 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.

Robert P. Wiemann, Director
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, the applicant states that he did not apply for TPS during the initial registration period because his son was sick and that he has provided enough proof to establish his continuous residence and his continuous physical presence during the qualifying 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 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 entry on or prior to February 13, 2001, 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 by the Secretary of the Department of Homeland Security, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time 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 August 23, 2003.

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 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 January 2, 2004, 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 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, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the

qualifying period. The applicant also stated that he had a petition pending with CIS since 1998. The director determined that he did not present sufficient evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he is requesting consideration on humanitarian reasons. According to the applicant, he did not apply during the initial registration period because his son was sick and he did not have the money to pay for TPS registration. The applicant also states that he has provided sufficient evidence of his continuous residence and continuous physical presence, as well as evidence that he has had a petition pending with CIS since 1998. The record indicates that the applicant provided evidence that he had an approved Form I-130 Petition for Relative, Fiancé, or Orphan approved on July 7, 1998. However, a Form I-130 is not an application for change of status as provided in 8 C.F.R. 244.2(f)(2), and does not render the applicant eligible for late registration. The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Moreover, the applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's conclusion that the applicant failed to establish his eligibility for late registration 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.

As stated above, the applicant was requested on January 2, 2004 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. An undated letter from Capital One.
2. A 2001 tax statement and a replacement refund check for 2000, from Internal Revenue Service, 2001 refund receipts from New York State Department of Taxation and Finance and State of Connecticut Department of Revenue Services.
3. A letter and other documents from Premila S. Shah, D.D.S. regarding dental work performed on March 4, 1998.
4. Fleet Bank statements for periods from June 21, 2003 through July 23, 2003, September 23, 2003 through October 23, 2003, and October 24, 2003 through November 20, 2003.
5. An envelope date-stamped September 3, 2003.
6. Copies of money transfer receipts dated September 27, 2003, October 18, 2003, and November 21, 2003, as well as copies of an undated transfer and partially dated receipts
7. Copies of a Social Security Administration Retirement, Survivors, and Disability Insurance request for Employee Information dated February 23, 2003 and follow-up notice dated April 4, 2003.

8. A copy of an account statement from an unidentified company dated August 3, 2003.
9. Copies of a prescription dated February 28, 2003, another prescription and related receipts dated May 14, 2003 and a prescription dated October 20, 2003.
10. A copy of a New York Automobile Insurance Application dated February 13, 2001 and a temporary New York State Insurance Identification Card dated November 12, 2002.
11. Copies of receipts from TRB Insurance dated February 13, 2001, Wilson Leather dated August 10, 2003, Wireless Future & Phone dated December 26, 2003, and an undated account statement from Sprint.
12. Copies of a New York State Department of Motor Vehicles Vehicle Registration Renewal with an expiration date of May 9, 2003 and an Interim License dated May 10, 2001.
13. Copies of a Certificate of Completion of Basic Management Training from Baskin Robbins dated January 16, 2002 and a certificate from Southern Westchester BOCES Adult Learning Center dated June 22, 2001.
14. Copies of a pay stub from Europa Management Group IHOP dated May 24, 2002 and pay stubs from Midland Donut, Inc. dated October 11, 2001, December 6, 2001, June 13, 2002 and March 8 (year unknown).

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, the applicant fails to submit any additional evidence.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the periods from February 13, 2001 and March 9, 2001 respectively. 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 this ground will also 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.