

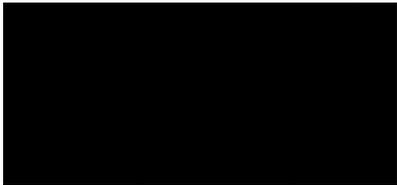


U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[LIN,03 275 50259]

Office: Nebraska Service Center

Date:

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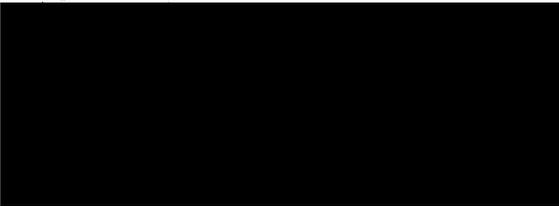
Applicant:



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 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, 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 he was eligible for late registration. The director also denied the application because the applicant failed to establish that he "entered and has resided the United States since February 13, 2001", and he failed to establish his continuous physical presence in the United States since March 9, 2001. In addition, the director denied the application because the applicant failed to provide a copy of his birth certificate or passport.

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 filed his initial application [LIN 01 171 52254] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 19, 2001. That application was denied due to abandonment on March 26, 2002, because the applicant failed to appear for his scheduled fingerprint appointment. Counsel, on behalf of the applicant, filed a motion to reopen this application on March 3, 2003. The director rejected the motion to reopen on May 13, 2003, because the motion to reopen was untimely filed and no excusable reason was provided for the delay.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 03 275 50259] on September 22, 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 his date of entry into the United States on or before 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. The director also determined that the applicant also failed to provide a copy of his birth certificate or passport.

The applicant's initial Form I-821 was properly filed on April 19, 2001. That initial application was denied by the director on March 26, 2002. 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 September 22, 2003. Since the initial application was denied on March 26, 2002, 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 is eligible for TPS 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.

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).

On November 21, 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). In addition, the applicant was requested to submit evidence to establish his "residence in the United States since February 13, 2001", and his continuous physical presence in the United States since March 9, 2001. The applicant was also requested to submit a copy of his birth certificate or passport. In response, the applicant submitted some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States; however, the applicant did not provide any evidence in support of his eligibility for TPS late registration. The director determined that the applicant had failed to establish his eligibility for TPS and denied the application on February 24, 2004.

On appeal, the applicant states that and he is providing the following documentation along with his appeal: a copy of his El Salvadoran birth certificate along with an English translation; a copy of his Washington State ID Card issued to him on September 23, 2000; copies of Receipts for Registered Mail dated November 13, 2000, January 17, 2001 and July 23, 2001, from the United States Postal Service; copies of two Customer's Receipts dated November 13, 2000 and January 17, 2001, from the United States Postal Service; copies of money transfer receipts dated February 8, 2001, February 22, 2001, August 15, 2001, and September 6, 2001, from RIA envia; copies of envelopes postmarked March 9, 2001, April 12, 2001, and April 30, 2001, from the applicant to his wife in El Salvador; a copy of an envelope addressed to the applicant in the United States bearing a postmark date of March 30, 2001; a copy of a letter dated January 15, 2003, from [REDACTED] ESL Instructor at Beg Ben Community College, who stated that the applicant had attended English as a Second Language in Quincy, Washington, from November 2000 through April 2001; copies of Student Attendance Records from January 2001 through March 2001; a copy of a letter dated January 17, 2003, from Ms. [REDACTED] who stated that she met

the applicant in May 2000; copies of his earnings statements from Skeels Orchards, Inc. reflecting pay periods from September 21, 2001 through October 5, 2001; a copy of a billing statement dated September 8, 2001, from Columbia Valley Community Health and Dental; a copy of a receipt from the CVCH – Dental dated October 1, 2001; a copy of his Form I-512, Authorization for Parole of an Alien into the United States, reflecting his return to the United States from El Salvador on December 6, 2001; copies of his IRS Form W-2, Wage and Tax Statements for the years 2001 and 2002; a copy of the director's September 6, 2001, request for evidence regarding his initial TPS application; a copy of the applicant's DBI Tenprinter Applicant Information Worksheet dated November 12, 2003; a copy of a month-to-month lease agreement commencing on July 1, 2000, bearing the name of the applicant and two other individuals; a copy of a letter dated February 28, 2003, from the applicant's current attorney, Mr. [REDACTED] regarding the motion to reopen the applicant's initial TPS application; and a copy of an email from his previous attorney, Ms. [REDACTED] to Ms. [REDACTED] regarding his application for TPS.

The first issue in this proceeding is whether the applicant has established his date of entry into the United States on or before 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.

A review of the evidence provided on appeal establishes that the applicant has maintained a residence in the United States during the qualifying periods for El Salvadoran TPS. It is also noted that the applicant, on appeal, provides a copy of his birth certificate. In addition, the record of proceedings contains a copy of the applicant's El Salvadoran passport; thus, establishing his identity and that he is a national or citizen of El Salvador. Therefore, the director's decision to deny the application on these grounds will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed the instant application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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.

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 decision to deny the application for TPS late registration will be affirmed.

It is also noted that the applicant departed the United States to El Salvador on August 28, 1999.

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.