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U.S. Citizenship  
and Immigration  
Services

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MI

JAN 25 2005

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:



aka

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*

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 determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from March 9, 2001 to September 9, 2002. The director also determined that the applicant had not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001 and continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that he initially filed an application for TPS in October 2002. He states that the application was filed within an extended 60-day period deadline after September 9, 2002. The applicant also states that he had no knowledge that a form for that period needed to be included with his application because no information concerning the form was given to him when he received a TPS application package.

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 parole; 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 reveals that the applicant submitted an application for TPS to the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 29, 2002. The application was returned to the applicant on December 17, 2002 because he had not included the correct filing fee. The application for TPS and the correct filing fee were properly filed on December 30, 2002.

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).

The first issue in this proceeding is 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.

The applicant filed his application for TPS on December 30, 2002. In support of his application, the applicant submitted affidavits from individuals claiming knowledge of the applicant's residence in the United States.

The applicant was requested on April 4, 2003 to submit: (1) evidence of nationality; (2) a photo identification document; (3) evidence to establish continuous residence in the United States since February 13, 2001; and (4) evidence to establish physical presence in the United States since March 9, 2001. In response, the applicant submitted a photo identification document, evidence to establish that he is a national of El Salvador, and evidence of his residence in the United States.

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 May 30, 2003.

On appeal, the applicant did not furnish any additional evidence to establish that he had met the continuous residence and physical presence criteria for TPS described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

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

The record of proceeding confirms that the applicant filed his application for TPS on December 30, 2002, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant 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 or she 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).

As stated above, on April 4, 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, in response, provided documentation relating to his residence and physical presence in the United States; however, he did not submit any documentation to establish that he was eligible for late registration.

The director determined that the applicant had not established that he was eligible for late registration. On May 30, 2003, the director denied the application. On appeal, the applicant states that he initially filed the application for TPS "within the extended 60 day period deadline after September 9, 2002," and that he was not aware that he needed to file an additional form which was not included in his TPS registration package. However, the application submitted on October 29, 2002 was returned to the applicant because he had not submitted the correct filing fee. The applicant did not return the application form and the correct filing fee until December 30, 2002.

The applicant has not furnished any evidence to establish that he met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will also be affirmed.

The burden of proof is upon the applicant to establish that he 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.