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[REDACTED]

FILE: [REDACTED]
[LIN 03 271 50117]

Office: NEBRASKA SERVICE CENTER

Date: JUL 15 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, 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 found that the applicant had failed to establish entry into the United States prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 December 27, 2001, because the applicant failed to establish his date of entry into the United States. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 15, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on May 25, 2001. That initial application was denied by the director on December 27, 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 September 15, 2003. Since the initial application was denied on December 27, 2001, 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 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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on September 15, 2003.

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).

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

The record of proceedings 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, 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 November 12, 2003, the applicant was requested to submit evidence to establish his identity and nationality, evidence to establish his eligibility for late initial registration, and evidence to establish entry into the United States prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and

continuous physical presence in the United States since March 9, 2001. In response, the applicant provided evidence of identity and nationality and evidence to establish his date of initial entry, continuous residence, and continuous physical presence, but he failed to provide any evidence to establish his eligibility for late initial registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 15, 2004.

On appeal, the applicant states that he applied for TPS during the initial registration period, and he was "granted TPS until September 9 of 2002."

On appeal, the applicant states that he was "granted TPS until September 9, 2002." He submits a photocopy of his Employment Authorization Card valid from August 29, 2001 to September 9, 2002. This Employment Authorization Card was issued based on the applicant's pending TPS application. As stated previously, the applicant's initial TPS application was denied on December 27, 2001. When the applicant filed a second Form I-765, Application for Employment Authorization, on September 18, 2002, under CIS receipt number LIN 03 032 52359, that application was denied because his TPS application had been denied, and he was no longer eligible for employment authorization. The applicant has never been granted TPS; rather, he was granted employment authorization **while his TPS application was pending**.

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 basis will be affirmed.

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

The applicant initially submitted a photocopy of a pay statement from El Parral Mexican Restaurant in Englewood, Colorado, dated March 20, 2001.

On November 12, 2003, the applicant was requested to submit evidence to establish his identity and nationality, evidence to establish his eligibility for late initial registration, evidence to establish his date of initial entry into the United States, and evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted the following:

1. a photocopy of his Salvadoran passport issued by the Salvadoran consulate in Dallas, Texas, on August 12, 2002;
2. photocopies of Sprint PCS monthly bills dated February 5, 2002 and May 5, 2002;
3. money transfer receipts dated June 19, 2001; July 16, 2001; and July 20, 2001;
4. a photocopy of a bill from American Family Insurance with a due date of November 8, 2001; and,

5. photocopies of pay statements from El Parral Mexican Restaurant dated: April 5, 2001; October 5, 2001; April 5, 2002; and November 20, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 15, 2004.

On appeal, the applicant reiterates his claim that he has lived in the United States since 1999. He submits the following:

6. a photocopy of a bill from American Family Insurance dated January 8, 2001;
7. an affidavit dated November 10, 2001, from [REDACTED] and [REDACTED] stating that the applicant had lived with them since July 1999 at [REDACTED], and that he paid a rent of \$200 per month; and,
8. a photocopy of an information cover letter dated August 29, 2001, that was mailed to the applicant with his Employment Authorization Card.

The applicant has submitted sufficient evidence to establish entry into the United States prior to February 13, 2001, and continuous residence and continuous physical presence in the United States from February 2001 through August 2002; however, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the period from August 12, 2002 through September 15, 2003, the filing date of his TPS application.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.