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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 03 242 50565]

Office: Vermont Service Center

Date:

JUL 18 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:

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 cursive script, appearing to read "Robert P. Wiemann".

for 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 denied the application because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods, and to establish his eligibility for TPS late registration. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits additional evidence in support of his claim.

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 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 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 record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on August 13, 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 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 September 17, 2003, the applicant was requested to submit evidence to establish 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 as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application. On January 12, 2004, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, counsel, on behalf of the applicant, states that the applicant did, in fact, respond to the director's request. Counsel also states that the applicant submitted three rent receipts dated January 5, 2001, February 5, 2001, and March 5, 2001, in support of his eligibility for TPS. Counsel provides copies of the same three rent receipts. Counsel asserts that this evidence clearly shows that the applicant has established his residence and physical presence in the United States during the requisite time period for El Salvador TPS. A review of the record of proceedings reflects that on October 22, 2003, counsel responded to the director's September 17, 2003 request, and submitted a single medical bill dated December 27, 1999, in support of the applicant's eligibility for TPS.

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 or she 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 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).

On appeal, counsel submits evidence in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status 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 conclusion that the applicant had failed to establish his eligibility for TPS late registration will be affirmed.

The second 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, to the date of filing his application.

On appeal, counsel provides the following evidence in support of the applicant's eligibility: a copy of an apartment lease dated April 28, 1998, bearing the names of [REDACTED] as tenants; copies of the applicant's medical bills dated September 13, 1999, November 28, 1999, December 26, 1999, and January 3, 2000; a copy of a letter dated February 15, 2000, and a prescription dated May 21, 2002, from the Massachusetts General Hospital Chelsea Health Care Center; copies of appointment letters dated December 9, 2003 and January 21, 2004, from the Massachusetts General Hospital; an unsigned letter dated March 25, 2003, from [REDACTED] of the Oficina Hispana de la Comunidad indicating that the applicant had been registered for ESOL classes since April 2002; a copy of the letter dated July 26, 2003, from [REDACTED] of Our Lady of the Assumption Parish, who stated that the applicant had been attending mass on a regular basis since the year 2000.

In addition, the record of proceedings reflects that the applicant submitted, along with his TPS application, the following documentation: an undated letter from [REDACTED] who stated that he has known the applicant since May 1999; a letter dated July 26, 2003, from [REDACTED] Our Lady of the Assumption Parish, who stated that the applicant had been attending mass on a regular basis since the year 2000.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The letter from [REDACTED] indicates that he has known the applicant since May 1999; however, he does not indicate whether his acquaintance with the applicant was in the United States. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The copies of the applicant's medical bills from the Massachusetts General Hospital Chelsea Health Care Center pre-date the beginning of the requisite time periods for continuous residence and continuous physical presence by one year. Also, the prescription and appointment letters from the Massachusetts General Hospital Chelsea Health Care Center, as well as the letter from [REDACTED] post-date the beginning of the requisite time periods for continuous residence and continuous physical presence by one year. Further, there is a significant gap in the submitted evidence for the period from February 15, 2000 to April 2002, of over two years. The applicant claims to have lived in the United States since September 6, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his continuous residence and continuous physical presence in the United States since that time. 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 continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will also be affirmed.

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.