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U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 03 244 51937]

Office: VERMONT SERVICE CENTER

Date:

JUN 23 2005

IN RE:

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:

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 denied the application because the applicant failed to establish he was eligible for late initial registration. The director also found that the applicant had 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.

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

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 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 initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on August 18, 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 October 1, 2003, the applicant was requested to submit evidence to establish his eligibility for late initial registration. The applicant was also requested to provide additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted evidence relating to his residence and physical presence in the United States; however, he failed to submit 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 initial registration and denied the application on March 5, 2004.

On appeal, the applicant submits additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

However, this evidence does not mitigate the applicant's failure to file his Form I-821, 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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

As stated previously, the applicant was requested on October 1, 2003, to submit evidence to establish his eligibility for late initial registration and additional 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. an affidavit dated October 18, 2003 from [REDACTED] stating that he has known the applicant since December 19, 2000;
2. an affidavit dated October 18, 2003, from [REDACTED] stating that she has known the applicant since December 14, 2000;
3. an employment letter dated October 13, 2003, from [REDACTED] Athletics, Inc., of Farmingdale, New York, stating that the applicant has been employed by his company since December 2001; and,

4. an affidavit with an illegible signature.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 5, 2004.

On appeal, the applicant states that he had sent all the requested document in response to the Notice of Intent to Deny, and he doesn't understand why it was never received at the Vermont Service Center. He submits the following:

5. a letter dated July 31, 2003, from [REDACTED] of the [REDACTED] in Hempstead, New York, stating that the applicant has been a parishioner of [REDACTED] for over 2 years;"
6. an affidavit dated March 22, 2004, from [REDACTED] stating that he has known the applicant since November 5, 2001;
7. a letter dated March 12, 2004, from [REDACTED] Store Manager [REDACTED] in West Hempstead, New York, stating that the applicant bought a mattress and box spring set from his store on October 1, 2001; and,
8. a letter dated March 12, 2004, from [REDACTED] manager of [REDACTED] Courier in Hempstead, New York, stating that his office has been doing business with the applicant since October 18, 2003.

The employment 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)(i). Specifically [REDACTED]'s letter is not signed and attested to under penalty of perjury. Further, [REDACTED] does not provide the address(es) where the applicant resided during the period of his employment, the exact dates of employment, the applicant's duties, or any periods of layoff during the applicant's employment for his company. Additionally, 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 [REDACTED] does not state the applicant's inclusive dates of membership in his parish.

The applicant has provided evidence indicating his residence and physical presence in the United States in October and November 2001, but he has provided only affidavits to establish his continuous residence and continuous physical presence in the United States throughout the requisite periods. The applicant claims to have lived in the United States since October 14, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided. 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.