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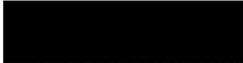
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 29 2005

[EAC 03 260 52899]

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 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.

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 June 16, 2003, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 17, 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 her 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 September 9, 2002. That initial application was denied by the director on June 16, 2003. 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 17, 2003. Since the initial application was denied on June 16, 2003, 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. Subsequent extensions of the TPS designation have been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed the current TPS application with Citizenship and Immigration Services (CIS) on September 17, 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 6, 2003, the applicant was requested to submit evidence to establish his eligibility for late registration. The applicant was also requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant stated that he did apply for TPS during the initial registration period, but his application

was denied after the director determined the applicant had abandoned his application by failing to respond to a request for evidence. The applicant further states that when the latest extension of the TPS designation for El Salvador was announced, he decided to file a second TPS application after having been informed by the local CIS office that he qualified for late initial registration. He submitted additional documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 25, 2004.

On appeal, the applicant has not submitted a statement or any additional evidence to establish his eligibility for late registration.

As previously stated, the applicant's prior TPS application was denied. The current TPS application was filed after the expiration of the initial registration period. In order to qualify for late initial registration, the applicant must submit evidence that he meets one of the criteria for late initial registration as forth at 8 C.F.R. § 244.2(f)(2). The applicant's statements in response to the Notice of Intent to Deny are acknowledged. However, these statements do not mitigate the applicant's failure to file the application during 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 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.

The applicant initially submitted an affidavit dated September 15, 2003, from [REDACTED] stating that the applicant is her boyfriend and that they lived together at [REDACTED] from December 2000 to July 1, 2002; at [REDACTED] from July 1, 2002 to May 2003; and, at [REDACTED] since June 1, 2003. The applicant also submitted an affidavit dated September 15, 2003, from [REDACTED] stating that the applicant has been working for him doing yard work every Saturday since January 2001.

As stated previously, the applicant was requested on November 6, 2003, to submit 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 photocopies of money transfer receipts dated January 6, 2001; November 6, 2001; and January 3, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 25, 2004.

On appeal, the applicant states that he can't provide more proof of his qualifying continuous residence and continuous physical presence in the United States during the requisite periods because his employer has been paying him in cash and because he has nothing in his name at his residence; however, he does not submit any

additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence.

The employment affidavit 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, the affiant does not provide the address where the applicant resided during the period of his employment.

The applicant has submitted only three money transfer receipts to support [REDACTED] affidavit. The applicant's address on the money transfer receipt dated January 6, 2001, [REDACTED] differs from the address listed by [REDACTED] in her affidavit dated September 15, 2003. [REDACTED] states that the applicant resided with her at [REDACTED] during that period. The applicant has not provided any explanation for this discrepancy. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is determined that the documentation submitted by the applicant is not sufficient to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. The applicant has not established 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 on these grounds will also be affirmed.

Beyond the decision of the director, the applicant has not submitted a photocopy of a national photo identification document to establish his identity and nationality. Therefore, the applicant also must be denied for this reason.

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.