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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[LIN 03 274 50274]

Office: NEBRASKA SERVICE CENTER

Date: JUN 29 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, 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 continuous residence in the United States since February 13, 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 September 12, 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 3, 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 additional evidence in an attempt to establish 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 16, 2004.

On appeal, the applicant submits the following: photocopies of his Employment Authorization Card valid from August 14, 2001 to September 9, 2002, along with three United States Postal Service receipts relating to items mailed to the Nebraska Service Center on November 8, 2002; June 24, 2003; and, November 9, 2002.

The record reveals that the applicant filed a timely Form I-821, Application for Temporary Protected Status, with the Nebraska Service Center on May 4, 2001. That application was denied on August 5, 2002, because the applicant failed to appear to be fingerprinted or to request that his fingerprint appointment be rescheduled. As previously stated, the applicant did not file the current Form I-821 until September 12, 2003. The photocopied mail receipts submitted by the applicant on appeal are not sufficient to establish that the applicant filed a second Form I-821 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 decision to deny the application for temporary protected status 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.

On November 3, 2003, the applicant was 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 submitted the following:

1. a photocopy of a medical release form dated January 20, 2001, from the Department of Health, City of Detroit, Detroit, Michigan;

2. a photocopy of a Guidelines for Employment form dated October 17, 2000, indicating that the applicant had received medical clearance to work as a welder;
3. photocopies of [REDACTED] money transfer receipts dated: July 6, 2000; August 4, 2000; August 7, 2000; August 11, 2000; October 7, 2000; November 4, 2000; November 10, 2000; May 1, 2001; and June 8, 2001;
3. a photocopy of a pay statement from [REDACTED] in Allen Park, Michigan, for the pay period from December 18, 2000 to December 24, 2000;
4. photocopies of the applicant's 2000 and 2001 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, from [REDACTED] Detroit, Michigan;
5. a photocopy of an ADP pay statement dated July 6, 2000, from [REDACTED] in Van Buren Turnpike, Michigan;
6. a photocopy of the applicant's 2000 IRS Form W-2 from [REDACTED] in Romulus, Michigan;
7. photocopies of letters dated January 18, 2001 and February 21, 2001, from the [REDACTED] [REDACTED] Wayne, Michigan;
8. photocopies of pay statements from [REDACTED] dated: February 16, 2001; February 23, 2001; March 23, 2001; September 14, 2001; and January 4, 2002;
9. a photocopy of a generic cash rent receipt dated March 23, 2001;
10. photocopies of a document indicating that the applicant had Comcast cable installed in his residence on May 20, 2001, and Comcast billing statements dated December 23, 2000; July 22, 2001; and August 22, 2001;
11. photocopies of Detroit Edison bills with the following due dates: March 26, 2001; April 23, 2001; May 24, 2001; June 22, 2001; July 23, 2001; August 23, 2001; October 22, 2001; September 21, 2001; and December 26, 2001;
12. a photocopy of a letter from the Social Security Administration dated June 16, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 16, 2004.

On appeal, the applicant has not provided any additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

It is not clear how the applicant could be billed for Comcast cable service on December 23, 2000, when cable was not installed in his home until May 10, 2001. Further, the applicant indicated on both Forms I-821, Application for Temporary Protected Status, that he is single, but his pay statements indicate that he is married and claiming five exemptions. The applicant has not provided any explanation for these discrepancies. Doubt cast on any aspect of the applicant'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 applicant 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). Additionally, the applicant has not provided any evidence to establish continuous residence during the period from January 12, 2002 through September 12, 2003, the date of filing of his TPS application.

In view of the foregoing, it is concluded that the applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Beyond the decision of the director, the applicant has also filed to submit sufficient evidence to establish continuous residence in the United States during the requisite period. Therefore, the application 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.