

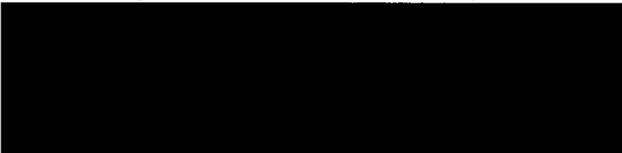
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U.S. Citizenship
and Immigration
Services

PUBLIC FOIA CASE

M1



FILE: [REDACTED]
[EAC 04 146 51141]

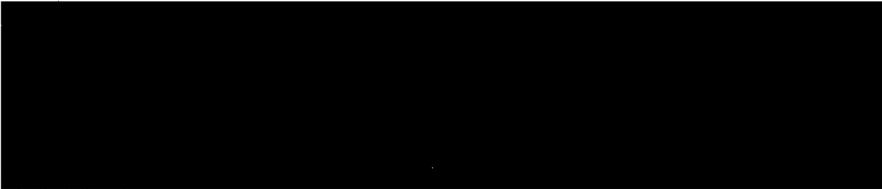
OFFICE: VERMONT SERVICE CENTER

DATE: Nov 28 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.

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 had failed to establish that he: (1) was eligible for late registration; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by 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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on April 16, 2004.

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 Citizenship and Immigration Services (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).

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

The record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated May 17, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director determined that the applicant had failed to respond to his request for additional evidence and denied the application on July 29, 2004.

On appeal, counsel asserts that the applicant was eligible for late registration because "he had an approved case from the Labor Department dated November 1, 2000 and he was informed by his former legal advisor Roberts,

Fidler & Mirasol Attorneys at Law on May 3, 2002 that they have requested the issue of a new passport to the Salvadorian Consulate in order to continue his legalization process and to obtain a US Residency."

The record contains a copy of an approved labor certification (Form ETA 750) dated November 1, 2000, for employment of the applicant as a "Cook, Short Order" at Fast Deli in New York. The record does not contain evidence that the applicant was in fact employed at this establishment, that a Form I-140, Petition for Alien Worker, was filed on his behalf, and that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on an approved Form I-140, and that the adjustment application was pending during the initial registration period. An approved labor certification, alone, does not convey eligibility for TPS as described in 8 C.F.R. § 244.2(f)(2).

The applicant has failed 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 on this ground 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 continuous physical presence from March 9, 2001, to the date of filing the TPS application.

In a notice of intent to deny dated May 17, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The director noted that the applicant's passport shows that he was born on March 17, 1979; however, the TPS application shows that he was born on March 1, 1979. He was also requested to provide an explanation of this discrepancy, including any relevant documentary evidence. The director determined that the applicant had failed to respond to his request for additional evidence and denied the application on July 29, 2004.

On appeal, counsel states that there is an error on the applicant's date of birth. He submits a copy of the applicant's birth certificate with English translation, and a copy of the applicant's passport issued on March 7, 2002, in New York, both indicating that the applicant was in fact born on March 17, 1979. He also resubmits the following evidence:

1. Copies of statements from Chase Bank for the periods June 16 to July 16, 1999; January 19 to February 15, 2000; February 16 to March 15, 2000; March 16 to April 17, 2000; and May 16 to June 15, 2000.
2. Copies of Urgente Express receipts dated April 12, 2001; December 26, 2001; and November 17, 2002.
3. A copy of a receipt issued by [REDACTED] dated May 11, 2001.
4. A copy of an envelope addressed to the applicant from [REDACTED] postmarked August 3, 2001, and a copy of a receipt issued by [REDACTED] for dental treatment received on October 15, 2001.
5. The record also contains a copy of the applicant's marriage certificate dated May 30, 2002.

Evidence furnished indicates that the applicant was present in the United States as of November 2000, prior to the requisite period required. However, no evidence was furnished to establish continuous residence since February 13, 2001, and continuous physical presence from November 2002 to the date he filed his application on April 16, 2004.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence and continuous physical presence as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.