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**U.S. Citizenship
and Immigration
Services**

MM



FILE: [REDACTED]
[EAC 04 118 52321]

Office: VERMONT SERVICE CENTER

Date: **NOV 30 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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 claims to be 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 and additional evidence.

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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 the current Form I-821, Application for Temporary Protected Status, on March 11, 2004. The director denied this second application, in part, 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 in part 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 June 18, 2001. 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 March 11, 2004. 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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest granted 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, through September 9, 2002. The record reveals that the applicant filed his current Form I-821 with Citizenship and Immigration Services (CIS) on March 11, 2004.

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

The record of proceedings confirms that the applicant filed his current TPS 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On April 7, 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 applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 1, 2004.

On appeal, the applicant states that he never received any CIS correspondence requesting that he submit additional evidence in support of his TPS application. The applicant further states that he was terminated from his job at Logan Airport because he could not provide his employer with an Employment Authorization Document to show that he was authorized to work in the United States, and he may be evicted from his apartment because he can't pay the rent. The applicant submits a photocopy of his Salvadoran birth certificate with English translation and evidence relating to his residence and physical presence in the United States.

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant claimed on his Form I-821 that he first entered the United States in June 1999. In support of prior TPS application, he submitted the following evidence:

1. a photocopy of a pay stub from [REDACTED] in Chelsea, Massachusetts, dated June 2, 2001;
2. a photocopy of an earnings statement from [REDACTED] Massachusetts, for the pay period from March 4, 2000 to March 10, 2000, reflecting the employee as [REDACTED] Social Security number [REDACTED];
3. a "fill-in-the-blank" statement from [REDACTED] stating that the applicant has been his tenant at [REDACTED] Massachusetts, "for two months," and stating that he has personal knowledge that the applicant has lived in the United State "before and after February 13, 2001;" and,
4. a letter dated July 19, 2002, from [REDACTED] stating he has known the applicant since November 2001.

As stated above, the applicant was requested on April 7, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

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

On appeal, the applicant submits the following:

5. a photocopy of a cover letter dated July 13, 2001, enclosed with the applicant's first Employment Authorization Card;
6. photocopies of earnings statements from [REDACTED] for the pay periods ending September 15, 2002 and October 20, 2002;
7. a photocopy of a 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED] in Leominster, Massachusetts, for [REDACTED] Social Security Number [REDACTED];
8. a photocopy of a mailing envelope postmarked June 27, 2001; and,

9. correspondence from Mastercard dated November 4, 2002.

The pay stub from [REDACTED] (No. 1 above) does not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods because the applicant's name is not printed on the form. Although the applicant's name is hand-written on the pay stub, his name could have been written on the form at any time by anyone; therefore, the pay stub cannot be accepted as proof of the applicant's employment by [REDACTED] during the requisite periods to establish periods to establish continuous residence and continuous physical presence in the United States. The earnings statement from [REDACTED] (No. 2 above) predates the requisite periods to establish continuous residence and continuous physical presence in the United States. Without corroborative evidence, the letters from [REDACTED] (No. 3 above) and [REDACTED] (No. 4 above) are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant's 2002 IRS Form W-2 (No. 7 above) is not sufficient to establish the applicant's continuous residence and continuous physical presence in the United States because it does not indicate the applicant's specific dates of residence and physical presence in this country during 2002.

The applicant has submitted evidence reflecting his residence and presence in the United States in June 2001 (No. 8 above), July 2001 (No. 5 above), September and October 2002 (No. 6 above), and November 2002 (No. 9 above), but he has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

The applicant not submitted sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

Beyond the decision of the director, the applicant has not submitted an official Salvadoran photo identification document to establish his identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

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.