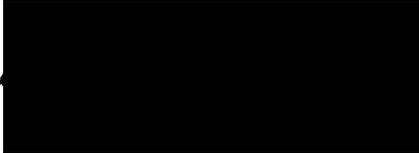


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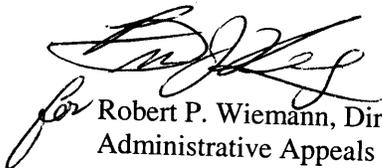
IN RE: Applicant: 

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.


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 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 had failed to establish that he: (1) had continuously resided in the United States since February 13, 2001; and (2) had been continuously physically present in the United States from March 9, 2001, to the date of filing the application; (3) he is a national or citizen of El Salvador; and (4) was eligible for late registration.

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 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 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 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 application.

The record shows that the applicant filed his TPS application on August 30, 2003. In a notice of intent to deny dated September 22, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond. Therefore, the applicant denied the application on May 12, 2004.

On appeal, the applicant submits:

1. A copy of Form 1040, income tax return for 2001, and Form 502, Maryland Tax refund for 2001.
2. A copy of Form 1099G, Maryland statement for income tax refund for the year 2001.
3. Copies of bank cancelled checks written by the applicant on January 9, 2001; February 15, 2001; March 1, 2001; April 11, 2001; May 3, 2001; June 1, 2001; July 9, 2001; August 15, 2001; September 12, 2001; October 20, 2001; November 22, 2001; and December 30, 2001.

The evidence furnished by the applicant on appeal establishes that the applicant has continuously resided in the United States since February 12, 2001, as described in 8 C.F.R. § 244.2(c). Therefore, the applicant has overcome this finding of the director.

However, no evidence was furnished to establish that the applicant has been continuously physically present in the United States from January 2002 to the date he filed his application on August 30, 2003. The applicant has failed to establish that he has met the criteria for continuous physical presence in the United States as described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established that he is a national or citizen of El Salvador.

In a notice of intent to deny dated September 22, 2003, the applicant was requested to submit evidence to show that he is a national or citizen of El Salvador. The applicant failed to respond. Therefore, the applicant denied the application on May 12, 2004.

On appeal, the applicant submits a copy of an El Salvadoran birth certificate with English translation.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

Although the applicant submits an El Salvadoran birth certificate, the applicant failed to accompany the birth certificate with a photo identification as required in 8 C.F.R. § 244.9(a)(1)(ii), listed above. Nor did the applicant submit a copy of his passport or a national identity document from his country bearing a photo and/or fingerprint. Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

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

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 August 30, 2003.

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).

On September 22, 2003, 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 failed to respond. Therefore, the director denied the application on May 12, 2004.

On appeal, the applicant asserts that he applied for TPS during the initial registration period of January 5, 1999 through August 20, 1999¹, and that he sent his application with the required filing fee in 1999. There is no evidence in the record to establish that the applicant filed a TPS application in 1999. Nor did the applicant furnish any evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted in the record that on October 24, 1989, the applicant filed an application for adjustment of status under section 249 of the Act of 1952. That application was denied on August 27, 1990, after it was determined that the documents presented by the applicant in support of the application are fraudulent.

On August 28, 1996, a Warrant of Deportation, Form I-205, was issued in Los Angeles, California, based on the final order of removal by an immigration judge on August 13, 1996. On September 10, 1998, a motion to reopen removal proceedings was filed by the applicant's attorney based on his claim that the applicant is "NACARA eligible to file for suspension of deportation." On March 7, 2000, the immigration judge denied the NACARA motion to reopen after determining that the applicant's NACARA motion was deemed abandoned, and that the applicant had also failed to demonstrate that he fell under one of the classes of individuals listed in 8 C.F.R. § 240.60. A Form I-205 was again issued on July 10, 2000.

On May 5, 2000, a Form I-140, Immigrant Petition for Alien Worker, was filed by Select Floors, Inc. on behalf of the applicant. That petition was denied on June 18, 2001, because the petitioner failed to establish that the beneficiary [the applicant] was eligible for the benefits normally reserved for "skilled workers." The record contains no evidence that the petitioner appealed this decision. Although the Form I-140 was pending during the initial registration period for El Salvadorans, the Form I-140, alone, does not convey eligibility for TPS.

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 TPS 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.

¹ It should be noted that the dates referred to by the applicant are the periods of registration for Hondurans.