



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: OCT 26 2008
[EAC 04 034 53106]

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.


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; and (2) had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

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 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 did file an initial application for TPS during the initial registration period on June 11, 2001. That application was denied due to abandonment on April 10, 2003, based on the applicant's failure to respond to the director's request for additional evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on November 17, 2003. The director denied this second application because it was filed outside of the initial registration period. Since the applicant did properly file an application during the initial registration period, the director did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on June 11, 2001. That initial application was denied by the director on April 10, 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 for 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 November 17, 2003. Since the initial application was denied on April 10, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 March 10, 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). In response, the applicant failed to submit any evidence to establish his eligibility for late registration. Therefore, director denied the application on April 14, 2004.

On appeal, the applicant asserts that he was scared to apply for TPS and work authorization because "people" told him not to send anything to CIS because he would get deported; also, he did not have the money to send his application because he did not have a steady job.

The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his 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 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 physical presence in the United States from March 9, 2001, to the date of filing the TPS application.

In a notice of intent to deny dated March 10, 2004, the applicant was requested to submit evidence establishing his qualifying continuous physical presence in the United States. In response, the applicant submitted:

1. A statement from [REDACTED] indicating that he has known the applicant since April 2001.
2. A statement from [REDACTED] indicating that she has known the applicant since November 2001.
3. A statement from [REDACTED] indicating that he has know the applicant since January 2002.
4. A statement from [REDACTED] indicating that he has known the applicant since August 2002.
5. A letter from Chevy Chase Bank dated March 15, 2004, certifying that the applicant opened an account with the bank on April 11, 2003.

The director determined that none of the statements submitted (Nos. 1, 2, 3, and 4 above) have all of the information required by CIS and are, therefore, insufficient and cannot establish residence or physical presence for the requisite period in question. She also determined that the letter from the bank (No. 5 above) was not notarized and the account was opened after the requisite period required to establish continuous physical presence. The director, therefore, denied the application on April 14, 2004.

On appeal, the applicant asserts that he does not have any documents such as rent receipts or medical receipts; he only has friends and co-workers who know him and can attest to his residence in this country. He submits another letter from Chevy Chase Bank dated April 19, 2004, indicating that the applicant has had an account with them since April 11, 2003.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). As determined by the director, none of the statements listed in Nos. 1, 2, 3, and 4 above have all of the information required by CIS. It is also noted that none of these statements were dated, attested to under penalty of perjury, listed their addresses and also the address where the applicant resides, and provided any details or specifics regarding the circumstances surrounding their acquaintanceship with the applicant.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b). 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.