



U.S. Citizenship
and Immigration
Services

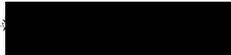
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FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 02 2005**

[EAC 03 246 52676]

[EAC 04 132 50466 – APPEAL]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits additional documentation.

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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 25, 2003, more than eleven months after the initial registration period had ended.

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 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).

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).

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 was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following documentation:

1. A letter, dated October 3, 2003, from the principal of the Ridge Street School, Newark, New Jersey, stating that the applicant is registered in the 8th grade and resides with his mother, [REDACTED], at [REDACTED].
2. A letter, dated October 4, 2003, from [REDACTED] stating that she resides at [REDACTED] Apt. 1, Newark, New Jersey, that the applicant lives in her custody and goes to school, and that she pays his rent and bills; and,
3. A photocopy of the identification page from an El Salvadoran passport issued to [REDACTED].

The director determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also determined that the applicant had failed to submit any evidence to establish his eligibility for late registration. The director denied the application on March 3, 2004.

On appeal, the applicant submits the following additional documentation:

4. Photocopies of receipts for "classes" issued to the applicant, dated December 1, 2001 (receipt # [REDACTED]) and January 1, 2002 (receipt # [REDACTED]) and, March 1, 2004 (receipt # [REDACTED]);
5. A photocopy of a receipt issued to the applicant in November 2003;
6. A photocopy of an immunization record belonging to the applicant indicating that he had immunizations/clinic visits in February and July 2000; May 2001; March 2002; and April, June, and October 2003.

The record of proceedings confirms that the applicant filed his application after the initial registration period had ended. Although the applicant has submitted evidence in an attempt to establish his qualifying residence and 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 conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

Furthermore, the documentation submitted by the applicant does not include sufficient objective evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant claims to have lived in the United States since September 2000. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim; however the only credible evidence submitted is No. 4, above, which establishes the applicant's physical residence in the United States on sporadic dates. The information relating to and provided by the applicant's mother (Nos. 2 and 3) are not, by themselves, persuasive evidence of the applicant's residence and physical presence. Furthermore, Nos. 1 and 5 are dated beyond the dates required to establish qualifying continuous residence and continuous physical presence.

It is concluded that the applicant has not submitted sufficient credible evidence to establish his qualifying **continuous** residence in the United States since February 13, 2001, and **continuous** physical presence since March 9, 2001. 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 also be affirmed.

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.