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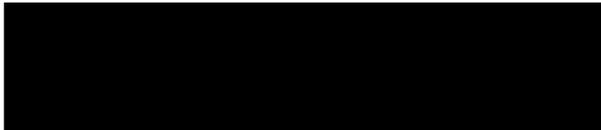
Office: VERMONT SERVICE CENTER

Date: **MAY 09 2006**

[EAC 03 253 53669]

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 he was eligible for late registration. The director also determined that the applicant failed to establish his continuous residence in the United States during the requisite timeframe.

On appeal, the applicant provides a brief statement and additional documentation.

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. The director denied that application on August 23, 2002, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility;
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until September 25, 2002 to file a motion. The applicant did not file a motion.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status on September 8, 2003. The director denied this second application because it was filed outside of the initial registration period, and the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also determined that the applicant failed to establish his continuous residence in the United States since February 13, 2001. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial regarding late registration. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for the denial with regard to late filing.

The applicant's initial Form I-821 was properly filed. That initial application was denied by the director on August 23, 2002. 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 September 8, 2003. Since the initial application was denied on August 23, 2002, the subsequent application cannot be considered as re-registration. Therefore, this application can only be considered as late registration.

It is noted that the applicant filed another Form I-821 on April 26, 2005

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 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 section 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 conditions described in paragraph (f)(2) of this section.

The first issue to be addressed in this proceeding is whether the applicant has established his eligibility for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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 Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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/child of an alien currently eligible to be a TPS registrant, and he 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 or she 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 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 record of proceedings confirms that the applicant filed this TPS application after the initial registration period had closed. In a notice of intent to deny, dated October 7, 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 of his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The director found that the applicant, in response to the notice of intent to deny, provided evidence "that you have been physically present in the United States from March 9, to the date of filing." However, the director also found that "since the evidence does not address late initial registration provisions or that you resided in

the United States as of February 13, 2001, it is therefore insufficient and does not meet the requirements for Temporary Protected Status.” The director denied the application on May 3, 2004.

On appeal, the applicant, in pertinent part, states:

1. I entered the United States on 06/24/1996 and applied for change of status by TPS on the [sic] 03/27/2001 as a results GRANTED, I received my first EAC card.
2. On 09/10/2002 I did my TPS re-registration with my address wrote [sic] correctly [REDACTED] it was sent to CIS on 09/24/2002 and was received by CIS on 09/26/2002. After that I never received any letter or any Employment Authorization Card in the year 2001 or even in 2003. I consider that was because my address was wrote [sic] wrong by CIS.
3. On January 22, 2003, CIS sent me a denial letter with a wrong address on it [REDACTED] Chelsea-MA-02150. This letter was sent back to you and was sent me [sic] again on May 22, 2003. [sic] with a correct address number. My TPS case was closed because it had a typing mistake and I **never** received any letter asking me for proof. For this reason I had to applied [sic] again as Late Initial Registration.
4. My current address is [REDACTED] and I have change [sic] my Address [sic] with CIS on 09/01/2003 with the form [sic] AR-11.

I hope and believe that I can be eligible for Late Initial Registration since my case was closed because I didn't received [sic] any correspondence from CIS.

5. I am a national of El Salvador.
6. I have been continuously physically present in the United States since and before February 13, 2001,
7. I had an application for change of status (my first TPS).

The applicant's aforementioned statement that he qualifies for "Late Initial Registration, because he "had an application for change of status (my first TPS)," is simply not applicable. A TPS application, Form I-821, as indicated in the beginning of this discussion is an Application for Temporary Protected Status and not an application for change of status (Form I-539). No documentary evidence has been presented on appeal to establish that the applicant has met the requirements for late registration as described in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the TPS application for this reason will be affirmed.

The remaining issue raised by the director to be addressed in this proceeding is whether the applicant has been continuously residing in the United States during the required timeframe.

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.

As previously stated, the director found that the applicant failed to provide evidence to establish his continuous residence in the United States during the required timeframe and, therefore, denied the application on May 3, 2004.

On appeal, the applicant states that he has "been continuously physically present in the United States since February 13, 2001. The applicant submits: a letter from the executive director of the CASL at [REDACTED] (Committee of Refugees from El Salvador) who states that he has known the applicant since he came to register as a soccer player on April 29, 2000, and every year after that until the year 2004; a copy of a tax bill from the City of Chelsea Office of the Treasurer/Collector, dated March 25, 2002; a copy of a bill from [REDACTED] dated July 31, 2000; a Form W-2, Wage and Tax Statement, for 2001, showing wages, tips and other compensation as \$6,670.00; a copy of a registration form from the United States Amateur Soccer Association, Inc., dated April 29, 2000; a copy of a previously submitted letter, not dated, from the owner of [REDACTED] who states that the applicant has been employed by him since January 2000; and, two copies of [REDACTED] from Liberty Mutual, one for a policy effective from September 17, 2001 to September 17, 2002, and the other effective from September 17, 2002 to April 5, 2003.

The applicant has not provided sufficient evidence on appeal to establish that he has been continuously residing in the United States since February 13, 2001. The letter from the executive director of [REDACTED], stating that the applicant registered for soccer for the years 2000, 2001, 2002, 2003, and 2004 is supported by only one registration form for April 29, 2000. The previously submitted letter from the owner of D and D Produce is not supported by any employment records or pay receipts. The tax bill is dated almost a year after the qualifying timeframe, and the bill from [REDACTED] is dated before the qualifying timeframe. None of the documentation submitted on appeal is sufficient in establishing the applicant's day-to-day living in the United

States from the onset of the qualifying timeframe to the filing date of his TPS application on September 8, 2003. The documentation submitted is not sufficient for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has not met the continuous residence criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status for this reason will also be affirmed.

Beyond the decision of the director, for the reasons stated above, the director erred in finding that the applicant established his continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for this reason.

The application will be denied for the above stated reason, 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.