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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAY 18 2006**

[LIN 03 242 50512]

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.

Cindy M. Gomez for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits additional evidence.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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. An extension of the designation for El Salvadorans TPS was granted by the Attorney General through 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid through 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 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on August 8, 2003.

The record of proceedings 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, 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, as stated above and at 8 C.F.R. § 244.2(f)(2).

On November 12, 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 establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States. In addition, the applicant provided a statement, in which he asserted that he had submitted his first TPS

application through an unspecified organization and that he has since been unable to establish contact with this organization.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 2, 2004.

On appeal, the applicant 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 had failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on November 12, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation consisting of tax returns, pay stubs, and bank statements. However, the director determined that the applicant had failed to submit sufficient evidence of continuous residence for the years 2002 and 2003, and denied the application for these reasons as well.

On appeal, the applicant reasserts his claim and submits the following additional documentation:

1. monthly statements from the SBC telephone company made out to the applicant, dated February 19, 2003 through December 19, 2003;
2. monthly bills from Nicor Gas made out to the applicant, carrying the following dates: October 7, 2002 to December 9, 2002; and February 7, 2003 through December 8, 2003;
3. monthly statements from AT&T made out to the applicant, dated March 6, 2002 to December 9, 2002;
4. a policy statement made out to the applicant from American Heartland Insurance Company dated December 28, 2002, covering the period from December 24, 2002 to June 24, 2003;
5. a credit card statement from Shell made out to the applicant, indicating closing dates of May 5, 2002, July 4, 2002, November 4, 2002, and December 4, 2002; and,
6. monthly ComEd utility statements made out to the applicant, dated February 21, 2002 through November 18, 2002.

The documentation provided by the applicant on appeal is sufficient to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the applicant has overcome these findings of the director. Nevertheless, as noted earlier, 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). Therefore, the application must be denied.

It is noted that the record includes the results of the Federal Bureau of Investigation (FBI) Identification Record fingerprint report, which reflects the following:

1. On September 9, 2000, the applicant was arrested by the Mundelein, Illinois, Police Department, on the following charges:
 - a) Charge 1 – driving while under the influence of alcohol;
 - b) Charge 2 – improper lane usage;
 - c) Charge 3 – operating an uninsured vehicle; and
 - d) Charge 4 – illegal possession and transportation of liquor while driving.
2. On June 23, 2002, the applicant was arrested by the Wauconda, Illinois, Police Department, and charged with two counts of driving while under the influence of alcohol.

The final court dispositions and conviction records are not included in the record. As such, the applicant may also be ineligible for TPS based on convictions for two or more misdemeanors and/or one felony.

An alien applying for TPS 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.