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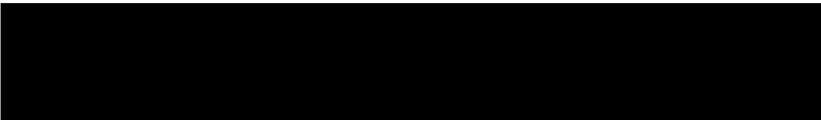
Office: VERMONT SERVICE CENTER

Date: **JAN 30 2007**

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:



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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that he was eligible for late registration.

On appeal, counsel states that the applicant has submitted sufficient evidence to demonstrate that he qualifies for TPS.

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. That application was denied on July 18, 2003, because the applicant failed to respond to the request for evidence establishing his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 9, 2002. Since the initial application was denied on July 18, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a new filing for TPS benefits.

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.

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 TPS designation has been granted with validity until September 9, 2007, 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 director determined that the second application filed by the applicant was for re-registration and could not be approved because the initial application submitted by the applicant was not approved, and thereafter, denied the application on July 30, 2003.

On appeal, counsel reasserts his claim. The record contains the following documentation:

1. A copy of an El Salvadorian passport issued to the applicant on February 15, 1996;
2. A copy of a money order made out to INS, bearing the applicant's case file numbers, and dated April 19, 2001;
3. A copy of a money order tracer correspondence which confirms that the above noted money order had been cashed;
4. A letter from the Academic Director of the Zoni Language Center, dated August 6, 2002, in which he states that the applicant attended the program as a part-time student in the English as a Second Language class from November 26, 2000, to April 22, 2001; and
5. A copy of an invoice from DNA Diagnostics Center dated September 27, 2001, indicating that the applicant was partially billed for the DNA Parentage Test conducted.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to September 9, 2002. There has been no corroborative evidence submitted to support the letter written by the director of Zoni Language Center (No. 4 above). While 8 C.F.R. § 244.9(a)(iii) states that school records are an acceptable form of evidence, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Nor are the invoice (No. 5 above), money order, and money order tracer (No. 2 and No. 3 above) sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States during the requisite period. The applicant claims to have lived in the United States since March 1, 1991 – more than ten years prior to the filing of the instant application. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the documents submitted; however, no such evidence has been provided. There is nothing in the record that attests to the applicant's continuous residency (rent receipts, mortgage payments, etc.) during the requisite period. Although the documents submitted were sparsely dated within the requisite period, there has been nothing presented (i.e. payroll records, cancelled checks, school transcripts, certificate of completion, income tax records, etc.) to demonstrate continuous physical presence in the United States from March 9, 2001, to September 9, 2002. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). For this reason, the application may not be approved.

It is also noted that the applicant was granted Voluntary Departure on January 9, 1997, with an alternate order of deportation. There is no indication in the record that the applicant departed as agreed; therefore, it appears that the removal order remains outstanding.

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.