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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

MAY 21 2007

[WAC 05 203 78887]

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:

[REDACTED]

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. Wemmann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he was continuously resident and continuously physically present in the United States since the dates applicable for TPS applicants from El Salvador.

On appeal the applicant asserts that he has been living in the United States since February 12, 2001, and that he qualifies for late TPS registration through his "foster father," who is a TPS grantee.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on February 21, 2005 – nearly two and one-half years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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). *See* 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. *See* 8 C.F.R. § 244.9(b).

On May 1, 2006, the service center issued a Notice of Intent to Deny (NOID) in which it requested the applicant to submit evidence that he was eligible for late registration, that he met the continuous residence and physical presence requirements for TPS applicants from El Salvador, and his date of entry into the United States. In response the applicant submitted a variety of documentation pertaining to his residence and physical presence in the United States, none of which dated prior to 2003, and no documentation addressing the issue of late registration.

On August 10, 2006, therefore, the director denied the application on the grounds that the applicant failed to establish that he was eligible for late TPS registration, and that he was continuously resident and continuously physically present in the United States since the applicable dates for El Salvadoran nationals.

On appeal the applicant asserts that he is eligible for late TPS registration through [REDACTED] a TPS grantee who has been his “foster father” since infancy and with whom he lives in Houston, Texas. The applicant does not submit any documentary evidence of a familial relationship with [REDACTED]. Citizenship and Immigration Services (CIS) records confirm that [REDACTED] Alien # [REDACTED] is a national of El Salvador who entered the United States in July 1992, applied for TPS in April 2001, during the initial registration period for El Salvadoran nationals, and was approved for TPS on September 9, 2004. [REDACTED] did not identify the applicant as a person with whom he has any familial relationship, however, and there is no documentation in [REDACTED] file of any such relationship. Simply going on record without supporting documentation does not satisfy the applicant’s burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, even if the applicant were a “foster child” of [REDACTED] without a formal adoption the applicant would not be a “child of an alien currently eligible” for TPS within the meaning of 8 C.F.R. § 244.2(f)(2)(iv). Thus, the record does not establish that the applicant – who filed for TPS nearly two and one-half years after the end of the initial registration period for El Salvadoran nationals – is eligible for late registration under the qualifying condition at 8 C.F.R. § 244.2(f)(2)(iv), or any other criteria enumerated under 8 C.F.R. § 244.2(f)(2). Accordingly, the director’s denial of the application on this ground will be affirmed.

As for the applicant’s residence and physical presence in the United States, no new evidence has been submitted on appeal. Thus, there is still no documentation in the record dating before 2003. The AAO concludes, therefore, that the applicant has failed to establish that he has been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director’s denial of the application on these grounds 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 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 that burden.

ORDER: The appeal is dismissed.