



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE: [REDACTED]
[EAC 07 005 80432]

Office: VERMONT SERVICE CENTER

Date: NOV 06 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who seeks 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 asserts that he has submitted sufficient proof of qualifying continuous residence and continuous physical presence.

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 as 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 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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, 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 or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed his initial TPS application on August 19, 2002 – during the initial registration period for Salvadorans. In support of his application, the applicant submitted a copy of his birth certificate without an accompanying translation, a work letter signed by [REDACTED] and an affidavit from [REDACTED]

On May 9, 2003, the director denied the application as abandoned, finding that the applicant had failed to show up for fingerprinting.

The applicant did not file either a motion or an appeal during the requisite timeframe. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent TPS application on September 4, 2006. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the late registration provisions. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. 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 denial.

The applicant's initial Form I-821 was properly filed on August 19, 2002. The director denied that initial application on May 9, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and where a decision is 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 4, 2006. Since the initial application was denied on August 19, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

On appeal, the applicant asserts that he never received the initial fingerprint notice and that he has submitted sufficient documentation to establish his qualifying continuous residence and continuous physical presence. He submits two additional statements from individuals who know him.

While the applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States, none of these documents overcome the applicant's failure to file his current TPS application 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). The director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

Furthermore, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence. The statements submitted by the applicant are of little probative value and can be given little evidentiary weight. The affidavit from [REDACTED] does not provide the affiant's date and place of birth or full information and/or complete details relating to the applicant's continuous residence and continuous physical presence in the United States as required by 8 C.F.R. § 244.9(a)(2)(vi).

The work letter signed by [REDACTED] does not provide the address where the applicant resided during the period of his employment. The information in the letter is not attested to under penalty of perjury. The letter is vague and only generally states that the applicant worked for the employer "delivering product in the New York Metropolitan Area." The letter does not list, for example, the duties performed by the applicant, how many hours per week he worked, periods of layoff, or what his rate of pay was. In addition, the letter is not substantiated by employment records such as pay stubs or W-2 Forms.

The two letters submitted on appeal can also be given little evidentiary weight. The statement from [REDACTED] is not in affidavit form, is not notarized, does not provide the affiant's address, date and place of birth, or full information and/or complete details relating to the applicant's qualifying continuous residence and continuous physical presence. The letter from the applicant's pastor does not explain the origin of the information to which the pastor attests, nor does the pastor provide the address where the applicant resided

during the period of his involvement with the church. Finally, the applicant did not submit any primary evidence to supplement these letters. The applicant claims to have lived in the United States since January 6, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided. The documentation submitted by the applicant is not sufficient to establish his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States 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). The director's decision to deny the application for TPS 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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.