

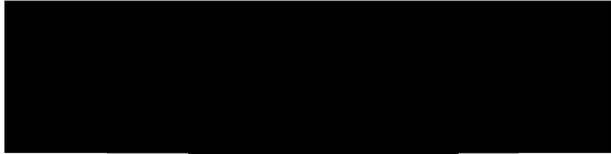


U.S. Citizenship
and Immigration
Services

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FILE:



Office: Nebraska Service Center

Date: JUN 30 2008

[LIN 03 050 51355]

INRE:

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: Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 record reveals that the applicant filed a TPS application on June 19, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 244 53600. The Director, Nebraska Service Center (NSC), denied that application on July 11, 2003 because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The director also found that the applicant had failed to provide photo identification. On August 1, 2003, the applicant submitted an appeal from the director's decision which was dismissed by the AAO on May 21, 2007, after the Chief of the AAO concluded that the applicant failed to establish his continuous residence and continuous physical presence in the United States during the **qualifying** periods. The AAO further noted that the applicant also failed to submit the final court disposition regarding his arrest on September 21, 2001, in Kodiak, Alaska for (1) assault in the fourth (domestic), (2) criminal mischief, and (3) disorderly conduct.

The applicant filed a second TPS application on July 25, 2002, under CIS receipt number LIN 02 249 50078. The Director, NSC, denied that application on April 1, 2003, because the applicant failed to submit sufficient evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods. On May 19, 2003, the applicant submitted a motion to reopen from the director's decision which was rejected on August 12, 2003, as untimely filed by the Director NSC. The applicant submitted an appeal from the director's decision on September 9, 2003 which was also dismissed by the AAO on May 21, 2007, after the Chief of the AAO concluded that the applicant failed to establish his eligibility for TPS.

The applicant filed his third application on November 8, 2002, under CIS receipt number LIN 0305051355. On July 11, 2003, the applicant was notified of the Service's intent to deny the Application for Temporary Protected Status, Form I-821. The basis for the intent was for the applicant to provide evidence establishing his eligibility for late registration, his continuous residence and continuous physical presence in the United States during the **qualifying** period, and photo identification. On August 25, 2003, the director, NSC, denied that application after he determined that the applicant failed to establish his eligibility for late registration. The director also found that the applicant failed to establish his **qualifying** continuous residence and continuous physical presence in the United States during the requisite periods. The applicant has now submitted an appeal from the director's decision.

On appeal, the applicant states that he repeatedly provided evidence that he was living and working in the United States during the initial registration period.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, 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 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 this application with Citizenship and Immigration Services (CIS) on November 8, 2002. To **qualify** for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On July 11, 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 as well as a photo identity. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 25, 2003.

On appeal, the applicant states that he never received the Notice of Intent to Deny that was sent on July 11, 2003, requesting additional information. He further states that he is hard working and seeks nothing more than Temporary Protected Status.

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 issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested to submit evidence establishing his **qualifying** continuous residence and continuous physical presence in the United States. The applicant, in response, provided a copy of a State of Alaska Identification Card issued on October 29, 2001; a copy of his employment authorization card; copies of rent receipts; copies of his Salvadoran passport and birth certificate with an English translation; a letter from Credit Union 1; a Consent for Treatment!Authorization for Billing from Providence Kodiak Island Medical Center; copies of pay stubs from Pappas & Co. dated July 5,2001 and August 28,2001; a letter **from** Administration, Island Seafoods, dated January 26,2007; copies of Form W-2, Wage and Tax Statement, for the year 2001 from Triden Seafoods Co and for the year 2002 from International Seafoods Of Alaska, Inc.; a letter from Rev. dated June 5, 2001; and, a letter from , Parish Secretary, dated April 15, 2003.

On appeal, the applicant reasserts his claim and submits a letter in Spanish with no English translation. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R.103.2(b)(3). As the applicant failed to comply with the aforementioned, the statements cannot be considered in the rendering of this decision.

Furthermore, the passport was issued in San Francisco on November 26, 2001, the employment authorization card was issued on September 21, 2001, and the Alaska identification card has no issue date but does have an expiration date of March 3, 2006. These documents indicate the applicant's presence in the United States on September 21,2001, at the earliest. The letter from Credit Union 1, although undated, offers insurance coverage that must be accepted before November 30, 2002. The hospital document is dated June 11, 2002. These documents are dated after the **qualifying** dates to establish continuous residence and continuous physical presence. Therefore, the documents cannot establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

In addition, in his letter, dated June 5,2001, Rev. states that the applicant has been a member of his parish since December 28, 2000 "to the present year 2001." However, the statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests.

The applicant has not submitted sufficient credible evidence to establish his **qualifying** 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). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed

It is further noted that the record of proceedings does not contain the final court disposition regarding the applicant's arrest on September 21,2001. CIS must address this arrest in any future proceedings.



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 this burden.

ORDER: The appeal is dismissed.