



U.S. Citizenship  
and Immigration  
Services

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FILE:

[EAC 09 074 50808]

Office: VERMONT SERVICE CENTER

Date: **DEC 03 2009**

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, 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 claims to be 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant was incorrectly told to apply for asylum. According to counsel, the applicant was subsequently told that he should have applied for TPS. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States.

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.

*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.

*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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on November 13, 2008.

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 United States Citizenship and Immigration Services (USCIS). 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 record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On January 29, 2009, the applicant was provided the opportunity 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 continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel states that the applicant entered the United States in 1994 and was told that he should apply for asylum. According to counsel, the applicant received employment authorization cards from 1994 to 2008 under his asylum application, but in 2008, he was told that he should have applied for TPS and not for asylum. While the applicant's pending asylum application technically rendered him eligible for late registration, regulations at 8 C.F.R. § 244(g) also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions described in 9 C.F.R. § 244.2(f)(2). USCIS records establish that the applicant's asylum application was withdrawn on January 30, 2008. The applicant did not file his TPS application until November 3, 2008, well beyond the 60 day limit for filing for TPS after termination of a qualifying condition. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted sufficient 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 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.

In support of his TPS application, the applicant submitted:

1. Copies of a Virginia Learner's Permit issued on June 20, 2003 and birth certificates for the applicant's children born on May 13, 2000 and September 5, 2005.
2. Copies of the applicant's birth certificate with English translation and a West Virginia Certificate of Marriage dated May 13, 2001.

As stated above, the applicant was requested on January 29, 2009 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted copies of an employment verification letter from [REDACTED] a statement from Internal Revenue Service regarding overpaid tax on the applicant's 2000 tax return; a bill of sale from [REDACTED], dated May 2, 2002; and a bill from AT&T with a due date of May 28, 2002.

The applicant also submitted evidence that is already part of the record.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits copies of 2000 to 2008 tax documents; an undated receipt for a verified identification; a receipt from the Social Security Administration dated September 28, 1995 a statement from the Social Security Administration indicating the applicant's earnings record; a Contract for Immigration Services dated November 3, 1994; a document in Spanish with no English translation dated November 3, 1994; and the birth certificate of the applicant's wife. The applicant also resubmits evidence previously provided.

[REDACTED] states that the applicant was employed by her company from April 4, 1998 to April 10, 2008. However, this 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. The receipt from the Social Security Administration shows that the applicant had earnings from 1996 – 2006, and the contract indicates the applicant was in the United States prior to the dates to establish continuous residence and continuous physical presence. The birth certificate of one of the applicant's children is also dated prior to the dates to establish continuous residence and continuous physical presence; however, this document can not establish the applicant's presence in the United States on that date.

In regards to the Spanish document with no English translation, any document containing foreign language submitted to USCIS 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. The remaining evidence is dated subsequent to the dates to establish continuous residence and continuous physical presence. It is therefore of little or no probative value.

The applicant has submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. He has, therefore, established 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 temporary protected status on these grounds will be withdrawn.

Beyond the director's decision, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on this basis as well.

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 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.