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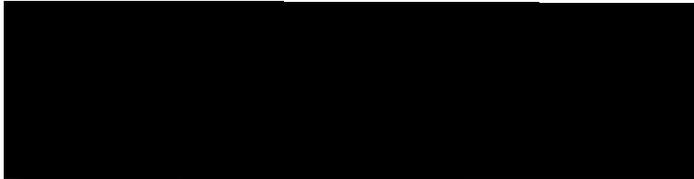
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



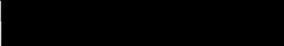
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 06 2009

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IN RE:

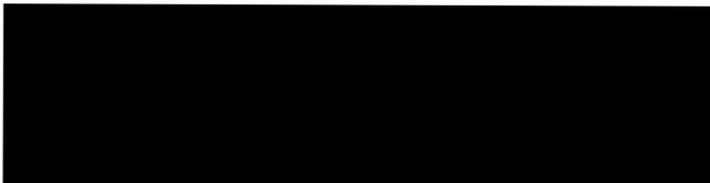
Applicant:



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).

John F. Grissom
Acting 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 he is prima facie eligible for TPS. The applicant also submits evidence in an attempt to establish his qualifying 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 October 19, 2007. The applicant filed his initial TPS application on April 2, 2002 under receipt number WAC 02 151 51901. The Director, California Service Center, denied that application on April 17, 2003 because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The applicant filed a subsequent TPS re-registration application on January 26, 2005 under receipt number WAC 05 118 71959. The Director, California Service Center, denied that application on August 16, 2005. On September 19, 2005, the applicant filed an appeal of the director's decision. The AAO dismissed that appeal on May 25, 2006.

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 June 27, 2008, the applicant was informed that he had not established continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the director denied the application.

On appeal, counsel states that the applicant is prima facie eligible for TPS. According to counsel, the applicant is providing sufficient supporting documentation on appeal to support the fact that he has been continuously present and resided in the United States during the qualifying period. Counsel also contends that the applicant never willingly failed to apply for re-registration. 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 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.

As stated above, the applicant was informed on June 27, 2008 of the reasons why his TPS application was being denied. Prior to the denial of his application, the only evidence presented by the applicant to establish his continuous residence and continuous physical presence was a statement from [REDACTED] President of JMP Builders Inc.

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:

1. A copy of the applicant's birth certificate with English translation.
2. Copies of letters from [REDACTED] and [REDACTED], and a prescription dated December 15, 2000 from [REDACTED]

3. Copies of an Identification Card from North Hollywood Polytechnic Community Adult School for the 2001-2002 school year, and, an undated Identification Card from the Valley Mini Soccer League.

The birth certificate, coupled with a copy of the applicant's El Salvadoran Identification Card (Cedula) establish his nationality and identity. [REDACTED] states that she dispensed the December 15, 2000 prescription to the applicant. However, [REDACTED] can only attest to the applicant's presence in the United States on that particular date. [REDACTED], principal of North Hollywood Polytechnic Education and Career Center states that the applicant was enrolled at her school from February 11, 2002 to June 17, 2002; September 2, 2002 to January 20, 2003; February 10, 2003 to May 12, 2003; and from September 15, 2003 to September 22, 2003. The applicant was enrolled at the school subsequent to the requisite dates to establish continuous residence and continuous physical presence. [REDACTED] states that the applicant has been a member of the Valley Mini Soccer League since January 4, 2001. However, [REDACTED] can only attest to the fact that the applicant has been a member of the league. His statement can not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period. [REDACTED] states that the applicant lived with him from December 2000 to December 2004. However, [REDACTED] statement has little evidentiary weight or probative value. The statement from [REDACTED] and the others are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. [REDACTED] states that the applicant worked for him from March 2001 to December 2001. 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. It is further noted that the affiant did not indicate the applicant's duties of employment.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and 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 temporary protected status on these grounds will also be affirmed.

It is also noted that counsel claims that the applicant had been defrauded by a notary that he hired to assist him with his initial TPS application. Any appeal or motion based upon a claim of ineffective assistance requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel or the authorized representative with respect to the actions taken and what representations counsel or the representative did or did not make to the respondent in this regard, (2) that the person whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 9 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988). The applicant has failed to submit any evidence in support of his claim, evidence

confirming that counsel or authorized representative has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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.