



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 09 085 82685]

Office: VERMONT SERVICE CENTER

Date: NOV 16 2009

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:

SELF-REPRESENTED

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

On appeal, the applicant requests that his application be reconsidered because he believes that he meets the requirements to qualify 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 December 11, 2008. The applicant filed his initial TPS application on October 12, 2007. The Director, Vermont Service Center, denied that application on May 15, 2008 because the applicant failed to establish his eligibility for late registration and to establish continuous physical presence from March 9, 2001 to the filing date of the TPS application. The applicant submitted a motion to reconsider which was dismissed by the director because the applicant had not submitted any new evidence to establish that he was eligible to file for late initial TPS registration or to establish his continuous physical presence in the United States during the requisite 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 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 this 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 May 15, 2008, the applicant was informed of the reasons the initial TPS application was denied. The director determined that the applicant had not provided any new and compelling evidence that overcomes the reasons the initial TPS application was denied. Therefore, the director denied the application. It is noted that the applicant stated that he was eligible to be considered for late registration because he had a pending asylum application. 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). The applicant's asylum application was denied on July 7, 2005 because he had failed to appear at a scheduled asylum interview. The notice was properly mailed to his address of record which the applicant still maintained at the time of appeal. The notice was returned undelivered marked "new address information unknown". Under the provisions stated above, the applicant was given 60 days from the date of the asylum denial to file a late initial application for TPS. The applicant did not file the application until December 11, 2008. Moreover, the applicant indicated that he was eligible for late registration based on his previous TPS application. TPS does not render nonimmigrant status to the applicant. Consequently, it does not qualify as a change of status application and does not render the applicant eligible for subsequent late registration.

On appeal, the applicant requests that his application be reconsidered because he believes he meets the requirements to qualify for TPS. According to the applicant, he has been physically present in the United States since prior to February 2001. The applicant also admits that his asylum application was denied in 2005 but that he did not understand the procedure to reopen it. In addition, the applicant also submits evidence in an attempt to establish his continuous 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 issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since March 9, 2001.

In support of his initial TPS application, the applicant submitted copies of Social Security Administration Statements showing earnings for 1991 through 1999 and for 1991 through 2004 and for 2006; a Social Security Card, a State of Texas Identification card, employment authorization cards issued from May 21, 1992 through January 31, 2005, and documents that are already part of the record.

As stated above, the applicant was informed on May 15, 2008 that he had failed to establish qualifying continuous physical presence in the United States and that he had not overcome this basis for denying the application. 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. Copies of an El Salvadoran birth certificate with English translation and an El Salvadoran passport issued on April 27, 2005 in Santa Ana, El Salvador.
2. Copies of employment letters from [REDACTED]; a letter from [REDACTED] 2004 and 2005 tax documents; a State of Indiana Identification Card issued on June 15, 2004, Social Security Administration Statement showing earnings for 1991 through 2004 and from 2006 through 2007; pay stubs dated January 3, 2008, to February 16, 2009; and money transfer receipts dated from February 15, 2008 through April 27, 2009.

The applicant also submits evidence that was previously provided.

The passport and birth certificate establish the applicant's identity and nationality. The Social Security Administration Statements indicate the applicant was employed during those designated years, but can not establish the applicant's continuous physical presence from March 9, 2001 to the filing date of the TPS application. [REDACTED] states that the applicant was employed by his company since February 1999. However, the statement from [REDACTED] 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 also noted the statement from the Social Security Administration does not show any reported wages for the year 2005. It is further noted that the affiant did not indicate the applicant's duties of employment. [REDACTED] states that the applicant has been his tenant since 1995. This statement also has little evidentiary weight or probative value as it is not supported by any corroborative evidence. The remaining evidence is dated subsequent to the dates to establish qualifying continuous physical presence. It is also noted that the passport was signed by the applicant and issued in El Salvador on April 27, 2005. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the operable timeframe.

The applicant has not submitted sufficient evidence to establish his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. 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.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) fingerprint results report indicates that the Seymour, Indiana State Police arrested the applicant on September 28, 2002 for "operating Vehicle While Intox." The applicant indicates on his latest TPS application that he has been convicted of a felony or two or more misdemeanors. However, the final disposition for this arrest is not in the record. United States Citizenship and Immigration Services (USCIS) must address this arrest and any conviction 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 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.