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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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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 23 2009

[EAC 09 021 79156]

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:

[REDACTED]

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).


for 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 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 also determined that the applicant failed to establish that he is a national of El Salvador. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the director erred in finding that the applicant is not eligible for late initial registration and he asserts that the applicant has submitted sufficient evidence to establish his nationality and his 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 applicant filed his initial TPS application on May 30, 2002. The Director, California Service Center, denied that application on June 17, 2004 because the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying periods. The record shows that the applicant filed this application on October 20, 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 June 17, 2004, the applicant was informed of the basis for the denial of the initial TPS application. The director determined that the applicant failed to provide any new and compelling evidence that overcomes the basis for denying the initial application. Therefore, the director denied the application.

On appeal, counsel states that the director erred in denying the application. According to counsel, the initial TPS application is an application for relief from removal which rendered the applicant eligible for late initial registration. Counsel also states that if the director found that the applicant did not establish continuous physical presence, the director should have submitted a notice of intent to deny, providing the applicant with notice and an opportunity to respond before his application was denied. In addition, counsel states that the applicant has submitted a birth certificate and an El Salvadoran Identification card, "Cedula," that establishes his nationality.

Counsel's contention that a TPS application is a form of relief from removal is incorrect. A previous application for Temporary Protected Status is not an application for adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation, and does not render the applicant eligible for subsequent late registration. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were created in order to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for Temporary Protected Status 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 17, 2004 that he failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. The applicant failed to provide any additional evidence.

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, counsel for the applicant states that the applicant submitted evidence of his physical presence, and that the director should have served the applicant with a notice of intent to deny, providing the applicant with an opportunity to respond, before his application was denied. The applicant has submitted copies of his birth certificate with English translation; a Salvadoran Identification Card "Cedula"; tax documents for the years 2003, 2004, 2005 and 2007; a letter from the Internal Revenue Service (IRS) dated December 20, 2004; a Notice of Hearing from the California Unemployment Insurance Appeals Board dated July 5, 2005; a receipt from Monterey County Superior Court dated September 30, 2005; and, a birth certificate for the applicant's daughter, who born on December 2, 2005. The applicant also submitted evidence that is already part of the record. All of the evidence submitted by the applicant is dated subsequent to the qualifying dates to establish his continuous residence from February 13, 2001 and his continuous physical presence in the United States from March 9, 2001 to the date of filing of the TPS application. Consequently, this evidence is of little or no probative value in determining his eligibility for Temporary Protected Status.

Moreover, contrary to counsel's claim, the director did inform the applicant that his application lacked supporting evidence to establish continuous residence and continuous physical presence in the in the notice denying his initial TPS application. The applicant failed to provide any additional evidence in support of the current TPS application. Furthermore, in the decision denying the present application, the applicant was again informed that he lacked evidence to establish continuous residence and continuous physical presence. The applicant had the opportunity to submit evidence on appeal to establish continuous residence and continuous physical presence, but failed to do so.

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 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.

The fourth issue in this proceeding is whether the applicant established his identity and nationality. The "Cedula" and birth certificate establish the applicant's identity and nationality. Therefore, this basis for the denial of the TPS application is withdrawn.

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.