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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  
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FILE:

[EAC 08 051 75373]

Office: VERMONT SERVICE CENTER

Date: **OCT 13 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 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, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant submitted his initial TPS application during the initial registration period and he maintains that the applicant was physically present in the United States on February 13, 2001. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on April 23, 2001. That application was denied on March 19, 2004 for failure to respond to a request for evidence to establish his eligibility for TPS. The applicant did not file a motion to appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on October 26, 2007. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration, and his continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant's initial Form I-821 was properly filed on April 23, 2001. That initial application was denied by the director on March 19, 2004. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on October 26, 2007. Since the initial application was denied on March 19, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 26, 2007.

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 August 20 2003, the applicant was informed of the reasons for the denial of his initial TPS application. The director determined that no new and compelling evidence had been provided to overcome the basis for the denial. Therefore, the director denied the application.

On appeal, counsel states that the applicant submitted his initial TPS application during the initial registration period. Counsel also contends that that applicant was physically present in the United States on February 13, 2001. 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. Counsel seemingly implies that submitting a TPS application during the initial registration renders the applicant eligible for late initial registration. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Therefore, the director's conclusion that the applicant had met this requirement is withdrawn and the application will be denied based on the applicant's failure to establish his eligibility for late registration. 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.

On June 30, 2003, in regards to his initial TPS application, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided a copy of statements from [REDACTED] and a pay check from Stained Glass Pub dated April 6, 2001. The director denied the application on August 12, 2003. On appeal, the applicant submitted copies of statements from [REDACTED] and [REDACTED]; a lease agreement dated December 21, 1993 and 2001 and 2002 Form W-2 Wage and Tax Statements. The director denied the appeal as untimely filed.

As stated above, in the current case, the director referred to the August 20, 2003 decision and informed the applicant that he had not provided sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States. 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 a Salvadoran passport and Birth Certificate with English translation.
2. Copies of statements from [REDACTED] and [REDACTED]
3. Copies of pay stubs dated May 18, 2001, and April 6, 2001; AT&T bills dated March 7, 1996, and May 7, 1996; a U.S. Postal Service Certified Mail Receipt dated April 18, 2001; and, a Comcast bill dated April 16, 2005.

The passport and birth certificate establish the applicant's identity and nationality. [REDACTED] of the Stained Glass Pub, states that the applicant was employed by his company on March 28, 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 [REDACTED] does not specify the applicant's duties of employment. Furthermore, [REDACTED] can only attest to the applicant's presence from March 28, 2001, which is subsequent to the requisite dates to establish continuous residence and continuous physical presence. The pay stub corroborates [REDACTED] statement. [REDACTED] states that he has known the applicant since February 2001 and that he hired the applicant to work part time at his business. However, this statement also lacks evidentiary weight because, in addition to failing to provide the address where the applicant resided during his employment, it does not indicate the exact periods of employment, the applicant's duties of employment, or the place of employment. Mr. [REDACTED] states that he has known the applicant since January 1, 2001 and that they were co-workers at Stained Glass Pub. [REDACTED] and [REDACTED] state that they know the applicant "came over" on May 23, 2000. However, these statements 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. The AT&T bills indicate the applicant was present in the United States on those dates, prior to the dates to establish continuous residence and continuous physical presence. Similarly, the Comcast work order indicates work was previously done on this account on May 3, 2001, October 11, 2004 and January 3, 2005. The remaining evidence is dated subsequent to the dates to establish continuous residence and continuous physical presence. The W-2's indicate the applicant was employed in 2001 and 2002, but these documents can not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying periods.

The lease agreement is dated prior to the dates to establish continuous residence and continuous physical presence in the United States. It is further noted that the applicant indicates on some his documents that he entered the United States on May 23, 2000 and on his most recent TPS application he indicates that he entered the United States on January 21, 1996. The lease agreement is dated prior to either entry date. Moreover, the entry date discrepancies have not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 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.