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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



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SEP 25 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
[WAC 05 116 70060]

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).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 record reveals that the applicant filed a TPS application during the initial registration period on November 21, 2001, under receipt number SRC 02 046 58976. The Director, Texas Service Center, denied that application on April 1, 2004, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the qualifying period. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 24, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the director denied the initial TPS application prior to the end of the 90 day period to respond. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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.

In this case, the applicant is not a current TPS registrant. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-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.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current application with United States Citizenship and Immigration Services (USCIS) on January 24, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 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).

On appeal, counsel states that the director denied the application prior to the end of the 90 day period to respond to the request for additional evidence. According to counsel, the applicant immediately responded to the March 12, 2004 request on March 24, 2004. Counsel argues that the director denied the application on April 1, 2004, prior to the end of the 90 day period to respond. Counsel also states that the applicant supplemented his response to the request on May 15, 2004, still within the 90 days allotted to respond. Counsel is correct that the director denied the initial TPS application prior to the end of the 90 day period allotted for response. However, the applicant submitted the additional evidence more than one month after the director's decision. The applicant could have submitted an appeal of the director's decision and included the additional evidence. However, he did not, and that evidence will be examined and adjudicated here.

The additional evidence provided by the applicant on May 15, 2004 included an employment affidavit from [REDACTED] a supervisor at Luby's Restaurant. According to [REDACTED] the applicant and [REDACTED] are one and the same person and he was employed at the restaurant from February 10, 2001 until March 13, 2003. 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 also submitted part of a copy of a 2001 W-2, Wage and Tax Statement from Luby's Inc for the applicant. While this document indicates the applicant was employed during 2001, it can not establish the exact dates of the applicant's employment. Furthermore, [REDACTED] stated that the applicant worked under the name of [REDACTED] at the time he was hired. However, there is no evidence of this employment in that name.

The applicant also submitted a statement from [REDACTED] and a hand-written receipt in Spanish from [REDACTED] dated January 30, 2001. Mr. [REDACTED] states that he has known the applicant since January 10, 2001. This statement also has little evidentiary weight or probative value. This statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support this assertion; however, no such evidence has been provided. The hand-written receipt is in Spanish, with no English translation. Any document containing foreign language submitted to the United States Citizenship and Immigration Services (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 applicant has failed to establish his continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant was initially denied for failure to establish the applicant's continuous residence and continuous physical presence in the qualifying periods. Therefore, any subsequent application can only

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. Since the initial application was denied on April 1, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.