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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: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 06 2010

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 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) 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, the applicant states that he qualifies for late TPS registration and has demonstrated residence in the United States since February 13, 2001. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying periods.

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 Secretary, Department of Homeland Security (Secretary), is eligible for TPS 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 Secretary 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 9, 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 March 12, 2001. That application was denied due to abandonment on October 9, 2002, because the applicant failed to respond to a request to appear for fingerprinting. No motion to reopen was filed from the denial of the initial application. The applicant filed the current application on December 5, 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 current 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 21, 2009, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his 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 his marriage certificate indicating he was married to Yanira Sulema Fuentes Reyes, a TPS-eligible alien, on January 5, 2000.

The applicant claimed on his initial TPS application and Application for Employment Authorization, Form I-765, signed March 8, 2001, residence in Houston, Texas and that he was single. The applicant submitted a change of address form dated February 19, 2002, reflecting his new address in Los Angeles, California. According to the director, USCIS records indicate [REDACTED] claimed to be single during the initial registration period and that she was residing in California during the timeframe the applicant was residing in Texas. Therefore, the director determined that the applicant had failed to establish eligibility for late registration under C.F.R. § 244.2(f)(2)(iv) and denied the application.

On appeal, the applicant states that he is eligible for late initial registration. According to the applicant, he and his wife were separated during the initial registration period. The applicant provides a Form 1040EZ, U.S. Income Tax Return, and Form 540, California Income Tax Return for 2002, indicating that he is married, and a Form 540 for 2001, indicating that he was single. The income tax returns have little evidentiary weight or probative value as they were not certified as being filed. The applicant does not offer any evidence or explanation as to when he and his wife separated, when they reunited or why they both claimed to be single on their respective documents. Therefore, the applicant's explanation regarding his marital status is inadequate. This discrepancy has 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). Consequently, the director's conclusion that the applicant failed

to establish his eligibility for late registration will be affirmed.

The record contains copies of an Employment Authorization Card issued to [REDACTED] on October 22, 2007, a 2008 Form W-2, Wage and Tax Statement, a City of Los Angeles Municipal Services bill issued on December 11, 2009, an earnings statement April 2, 2009, a [REDACTED] Gas bill for billing period February 19, 2009 to March 19, 2009, a hand-written rent receipt dated February 1, 2009, and birth certificates of the applicant's daughters dated November 20, 1997 and December 18, 2003 from El Salvador and the State of California, respectively.

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 requested on August 21, 2009, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, however, failed to submit any evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying periods.

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. Along with the Form 1040EZ and Form 540 for 2002, and a Form 540 for 2001 submitted on appeal, the applicant also provides:

1. Copies of 2001, 2002 and 2009 Form W-2, Wage and Tax Statements, a hand-written rent receipt dated March 1, 2010, a gas utility bill for the billing period from January 19, 2010 to February 18, 2010, a City of Los Angeles Department of Water and Power receipt dated March 4, 2010, a City of Los Angeles Municipal Services Sewer Service bill dated February 11, 2010, and various retail store receipts dated in 2010.
2. Additional copies of his daughters' birth certificates.

The applicant claims to have been residing in the United States since April 2000, but only provides a 2001 wage and tax statement in an attempt to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The wage and tax statement for 2001 only serves to establish that the applicant was employed at some point during that year. Without corroborative credible evidence, the wage and tax statement cannot establish the applicant's requisite *continuous* residence and *continuous* physical presence. It is reasonable to expect that the applicant would have additional contemporaneous evidence to support his assertion; however, no such evidence has been provided. The remaining evidence serves to establish the applicant's continuous residence and continuous physical presence subsequent to the requisite periods.

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 TPS 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 TPS 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.