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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

M₁

FILE:

Office: VERMONT SERVICE CENTER

Date:

JUN 02 2010

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:

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 Vermont Service Center. 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 Vermont Service Center 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 (AAO) 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) 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 disputes the assertion that an application for TPS does not qualify as “relief from removal,” and does not meet the definition of a “qualifying condition” under the late initial ruling provisions. The applicant also states that he would submit a brief and/or evidence within 30 days.

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.

An alien shall not be eligible for TPS under this section if the Secretary finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "misdemeanor:"

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244:1.

The record reveals the following offenses:

- (1) On October 5, 2008, the applicant was arrested by the Rosemount, Minnesota Police Department for "Driving Without a Valid License" and "No Proof of Insurance."

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 September 10, 2009. The applicant filed his initial TPS application on September 9, 2003. That application was denied on December 16, 2003, by the Director, Nebraska Service Center, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the qualifying period and his eligibility to file for late initial registration. The applicant filed a subsequent TPS application and indicated that he was re-registering for TPS. No appeal was filed from the denial of that application. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible for re-registration for TPS. The applicant filed an appeal of this decision on December 28, 2005. The AAO rejected the appeal on September 18, 2006.¹

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 December 16, 2003, the applicant was informed of the reasons for the denial of the initial TPS application. The director, in denying this application, determined that to date, the applicant has not

¹ The appeal was rejected as the individual who signed the Form I-290B had no legal standing in the proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B)

provided any compelling new evidence that overcomes the reasons for denying the initial TPS application.

On appeal, counsel for the applicant states that the applicant disputes the assertion that an application for TPS does not qualify as "relief from removal," and does not meet the definition of a "qualifying condition" under the late initial riling provisions. Counsel also states that he would submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

Counsel's contention that a TPS application is a change of status application is incorrect. Change of status, by regulation, is limited to a change of one nonimmigrant classification to another. 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. The provisions for late registration were detailed in 8 C.F.R. § 244.2(f)(2). Moreover, taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of TPS without ever being approved for TPS and/or successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

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). Consequently, the director's decision to deny the application for TPS 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.

In support of the current TPS application, the applicant submitted:

1. Copies of El Salvadoran passports issued in Chicago and Miami, on June 30, 2008 and January 22, 2003, respectively; and an EL Salvadoran Identification Card.
2. Copies of an undated Union Identification Card; a Money Gram receipt dated August 23, 2003; Wage Reports from 2002 - 2004; statements from [REDACTED] and [REDACTED] and a Spanish language document with no accompanying English translation.

As stated above, the applicant was informed on December 16, 2003, of the reasons for the denial of the

initial TPS 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 current application. On appeal, the applicant failed to submit any additional evidence to establish continuous residence and continuous physical presence.

The passports and El Salvadoran Identification Card establish the applicant's identity and nationality. [REDACTED] stated that the applicant has received funds that were used to send monies to El Salvador since January 2001. [REDACTED] owner of Saint Paul Soccer League, stated that the applicant had played in the soccer league from September 2001 to February 2002. However, these statements have little evidentiary weight or probative value, and they are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the affiant's assertions. Furthermore, [REDACTED] does not explain the origin of the information to which he attests. In regards to the Spanish language document, any document containing foreign language submitted to the 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 money gram receipt is dated August 23, 2003 and only serves to establish continuous residence and continuous physical presence since that time. Similarly, the 2002 - 2004 wage reports can only establish continuous residence and continuous physical presence in those years.

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 has provided the final court documents for any and all charges against him. A Federal Bureau of Investigation (FBI) fingerprint results report indicates, as stated above, that the applicant was arrested on October 5, 2008, for "Driving Without a Valid License" and "No Proof of Insurance." The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application. The applicant failed to address this basis for denial of the director's decision and fails to provide the requested court documents. The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that a Form I-200, Warrant for Arrest of Alien, and Form I-862, Notice to Appear, were issued to the applicant on October 8, 2008. USCIS electronic records indicate the applicant was granted voluntary departure on April 28, 2010.

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.